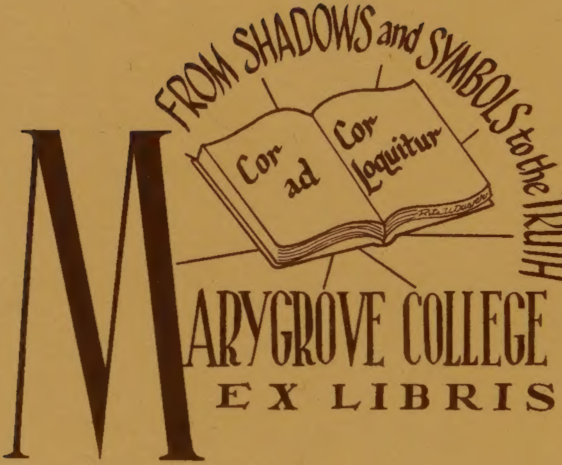

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A HISTORY

OF

MEDIÆVAL POLITICAL THEORY

A HISTORY
OF
MEDIÆVAL POLITICAL THEORY IN THE WEST

BY

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AND

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VOL. V.

THE POLITICAL THEORY OF THE THIRTEENTH CENTURY

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VOL. V.

THE POLITICAL THEORY OF THE THIRTEENTH CENTURY

PREFACE TO VOLUME V.

It is now a little more than thirty-five years since we began this work, and this volume represents more or less what we then thought to produce, but we had not gone very far before we recognised that in order to understand the real character of the political theory of the Middle Ages it was necessary to go back for many centuries, especially to the Roman Jurists of the second century, and to the Christian Fathers, and even to make some examination of the political conceptions of the post-Aristotelian philosophy, from which both Jurists and Fathers derived some of their most important principles. We have in previous volumes therefore endeavoured to set out something of the history of mediæval political theory, and to give their due weight to the various traditions out of which it arose, and by which it was influenced in varying degrees. In this volume we have endeavoured to set out the culmination of this long process of development in the thirteenth century.

We hope to publish another volume dealing with the movements of political thought from the fourteenth to the sixteenth centuries—that is, during the period of the Renaissance—and to inquire what if any new conceptions of importance took their rise during these centuries, and thus to see more clearly how far modern political conceptions are continuous with those of the Middle Ages.

The materials embodied in this volume have been already in part put before the public, though not in a written form, in the Lowell Lectures at Boston in 1922, and in the Birkbeck Lectures in Ecclesiastical History delivered in Trinity College, Cambridge, from 1925 to 1927; and one chapter (Part II., Chapter V.) has been published in his 'Revue de l'histoire du droit' by the kindness of Professor Fournier. We desire to express our sincere thanks to him, as well as to Professor Le Bras of Strassburg, who most kindly translated this chapter into French.

It would be impossible to enumerate all the eminent jurists and historians to whose critical and historical work we are greatly indebted, but we should wish to express, as we did in our first volume, our debt to the most learned of English mediæval scholars, Mr R. W. Poole, whose 'Illustrations of Mediæval Thought' gave us the first impulse to the work. And for this volume we desire especially to record our great obligations to the admirable work of Dr Richard Scholz, 'Die Publizistik zur Zeit Philipps des Schönen und Bonifaz VIII.,' without which it would have been difficult to deal with precision with the literature of that most important and critical period.

R. W. CARLYLE.
A. J. CARLYLE.

This is the first volume to which I have been able to make any direct contribution. When the work was first commenced I had hoped to have been able to take a direct part at a much earlier date, but other work made this impossible.

R. W. CARLYLE.

March 1928.

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PART I.

POLITICAL PRINCIPLES.

CHAPTER I.

INTRODUCTION.

WE have endeavoured in previous volumes to discuss the origin and to trace the development of what seem to us the most characteristic political conceptions of the Middle Ages, and we have seen that the history which we have been considering is the history of ideas and principles very living and very closely related to the actual experience of Western Europe. We have traced their origin to the post-Aristotelian philosophy, especially as represented in the works of the Christian Fathers and in the Roman Law books, and to the principles involved in the institutions of the new political societies which were built up upon the ruins of the Roman Empire in the West. We have considered how far these traditions had been affected by the development of Feudalism, by the revived study of the Roman Law in the twelfth century, and by the parallel development of the systematic treatment of Canon Law. In this volume we have to consider the full development of these conceptions in the thirteenth century, and their embodiment in the system of the representation of the community which in England we call the Parliament. For it is from the Middle Ages that the modern world has inherited the representative system, and this system was the natural development of the fundamental political conception of mediæval society—that is, that the community is the source of all political authority.

We are indeed confronted with a certain difficulty when we endeavour to trace the history of civilisation. There is a sense in which it is true to say that the civilisation of the Middle Ages culminated in the thirteenth century, and that this civilisation is different from the modern. In economic conditions and structure, in scientific and philosophic thought, in some aspects of art, in some intellectual forms of religion, there are certainly great and significant differences between the mediæval and the modern world. It may be said that in all these various aspects, the civilisation of the Middle Ages found its most complete expression in the thirteenth century, and that, with its close, it began to show evident signs of decay, and that it was only very slowly and gradually that the new system of the modern world emerged.

All this is in a measure true, and yet it is also doubtful whether it is more than a half-truth, and, like all half-truths, at least as misleading as it is illuminating. We cannot here deal with the general question, we must confine ourselves to the political aspect of civilisation. And here the conception of the existence of some profound gulf between the mediæval and the modern is a mistake; the history of political principles and even institutions was continuous. The Renaissance may or may not represent a really new beginning in philosophy and science, it did not do so in political ideas and forms.

It is no doubt true that there is one apparent contradiction to this continuity, and that is, that the conception of the union of Temporal and Spiritual power in one authority has disappeared. We have in this volume to deal with the final development of this conception, and we shall consider what was its real character. We would, however, venture to say at once and emphatically what we think is evident from the previous volumes of this work, that even so far as this conception was really important in the Middle Ages—and how far and in what sense it was so we shall have to consider—it had little or no relation to the actual character and development of political ideas in general. We venture to say that it will become clear to any one who considers the actual character and sources of the political ideas of the Middle Ages that they were wholly independent of this conception; that the principles of the supremacy of law, and of the community as the source of authority, were substantially unaffected by the question of the relations of the political and religious authorities.

We do not mean to undervalue the significance of the relation of the Temporal and Spiritual powers, nor do we mean to suggest that the great conflicts of the Middle Ages have not left behind them a principle of the greatest and most enduring importance—that is, the principle of the independence of the spiritual life from the control of the political authority of society. We do not undervalue this, for, indeed, we think that it is just here that we find the most profound of the differences which separate the ancient world from the mediæval and modern. And yet it remains true that this conflict did not in any intrinsic way affect the development of the general political ideas of the Middle Ages, and it is with these that we are concerned.

In this volume we have to consider the full development of the political theories whose origins we have endeavoured to trace in the earlier volumes, and their relation to the various political experiments of the thirteenth century, and especially to the system of the representation of the community. We shall now also find ourselves in a position to consider the revival of the Aristotelian political ideas, especially in the works of St Thomas Aquinas, and to ask how far this influence was of real importance. In the next volume we shall have to consider how far it was permanent.

CHAPTER II.

CONVENTION AND NATURE.

THE political theory of the Middle Ages is formally separated from that of Aristotle and Plato, and from that of the nineteenth century, by one great presupposition—that is, that the institutions of civilised society are founded upon "convention," not upon "nature." Not, indeed, that this distinction is only mediæval, for it continued to dominate European thought until the latter part of the eighteenth century. It is, indeed, only with Montesquieu, Rousseau's 'Contrat Social,' and Burke, that the characteristically modern return to the Aristotelian and Platonic mode of thought was established. No detailed discussion of this is necessary, for it is obvious that the conceptions of Hooker, of Hobbes, and of Locke, are all in their different ways founded upon the distinction between "nature" and convention.

The normal political theory of the Middle Ages was not Aristotelian, but was derived from the post-Aristotelian philosophy mainly through the Roman Law and the Christian Fathers. It was not till the thirteenth century that mediæval thinkers became acquainted with the Aristotelian political theory. In this chapter we shall consider the effects of this discovery in the attempt made by St Thomas Aquinas to restate some fundamental conceptions of political theory in the terms of Aristotle.

The post-Aristotelian political thinkers regard "nature" as primarily expressing the original or primitive condition of the world and of human life, a condition of innocence and felicity, out of which men passed owing to the appearance of vice or sin in man.

The Stoics, at least as represented by Posidonius in Seneca's account, looked back to a golden age in which men were uncorrupt in nature, lofty of soul, and but newly sprung from the gods, and in which they lived together in peace and happiness, requiring no coercive government, and seeking for no individual property. Out of this happy and innocent life they passed, because evil appeared in the world. They became ambitious, and were possessed by the lust of authority; they became avaricious, and would not be satisfied with the common enjoyment of the good things of the world.[1]

This conception of the difference between the natural state and the conventional is implied in the treatment of "Natural Law" in the Roman jurisprudence both of the second century and of the sixth, and, indeed, it is in some of the phrases which belong to these that the conception is most dramatically embodied. As far as the natural law is concerned, all men are equal, by natural law all men should be born free, says Ulpian; slavery, says Florentinus, is contrary to nature.[2] The treatment of the subject of "nature" in the Roman Jurists is not indeed free from ambiguities, and in our first volume we have endeavoured to disentangle these, but the general conclusion is clear.

When, therefore, we find the same conceptions in the Christian Fathers, there is no doubt as to their source. They were not specifically Christian ideas, but they fitted without difficulty into the Pauline interpretation of the story of the original innocence of man and his fall. And these were the conceptions of all the Fathers from St Irenæus in the second century and St Augustine in the fifth to St Gregory the Great in the sixth. They all present one and the same view of the original conditions of human life, and of the origin of the institutions of political society. Government, says Irenæus, was made necessary because men departed from God, and hated their fellow-men and fell into confusion and disorder of every kind.[1] God, said St Augustine, made the rational man to be the master of other animals, not of his fellow-men, and the lust of power of man over his fellows, who are his equals, is an intolerable arrogance of the soul.[2] St Gregory the Great bade men who are placed in authority to consider not their power and rank, but the equality of their nature, for man was by nature set over the irrational animals, not over his fellow-men.[3] All this represents, not the desire to depreciate the dignity or importance of the political order, as some writers have tended to think, not being fully aware of the post-Aristotelian theory of society, but only the assertion of the artificial or conventional character of organised society and its institutions, as contrasted with the happy anarchy of the primitive world.

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[1] Seneca, 'Epistles,' xiv. 2. (Cf. vol. i. p. 23.)

[2] 'Digest,' i. 17, 32; i. 1, 4; i. 5, 4. (Cf. vol. i. p. 47.)

It is true that we should be glad if we could see more clearly how these curiously unhistorical and infelicitous interpretations of human institutions should have replaced the sane and penetrating conceptions of Aristotle, and his apprehension that the social and political order was not the result of vice, but rather the method of the progress of man towards the attainment of his true nature. Unfortunately, the philosophic literature of the last centuries of the pre-Christian era has perished, or survives only in fragments, and we cannot do more than conjecture the causes which lay behind this change.

It is, however, reasonable to say that one explanation of the change was that, with all its merits, the Aristotelian theory of society did not take account, or at least did not take sufficient account, of some aspects of human nature which were apprehended during the centuries between Aristotle and the Christian era, and that also a certain undue conservatism of thought in Aristotle brought about an intelligible reaction. Aristotle's conception of political society as the necessary condition of human life and progress, and of the political order as founded upon the conception of a moral justice, were profound and permanent. But he failed to understand the complementary truth of the equal and free personality of men; and he accepted the actually existing inequality of the Greek and the Barbarian as though it were a final reality, instead of what it proved itself to be, merely a phase in the historical process.

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[1] St Irenæus, 'Adv. Haer.,' v. 24. (Cf. vol. i. p. 129.)

[2] St Augustine, 'De Civ. Dei,' xix. 15.

[3] St Gregory the Great, 'Exp. Moralis,' xxi. 15. (Cf. vol. i. pp. 126-128.)

It was not unreasonable when Aristotle recognised the gulf which lay between the Greek with his highly developed intellectual and political civilisation, and the crude barbarism of the Oriental world as he knew it; but a few generations of the Hellenistic civilisation were enough to show that he had taken the existing fact to be a perpetual and necessary truth. And in the same way, in his profound apprehension of the meaning of the social and political order of human life, he failed to take sufficient account of the fact that though, in his own phrase, the State is prior to the individual, the State exists for the individual, and not the individual for the State. The truth is that it was the apprehension of the equality of human personality which for the time being seemed to undermine the whole Aristotelian conception of society, and provoked a reaction in which, for the time, men could only think of the actual world as representing the result of some primæval catastrophe. For the equality of human personality was not a speculation but an observation of fact; it was Aristotle's attempt to distinguish between the natural master and the natural slave which proved itself to be a merely speculative theory. The Greeks went out into the world, and though a mere handful of men, the crazy empires of the East crumbled into dust before them; but as they settled down among the conquered peoples, they found them capable of learning all they had to teach. And presently a greater empire than the Macedonian found itself first puzzled and then conquered by an assertion of the independence of personality which refused to submit even to the majestic authority of Rome. The words attributed to the Apostles, "whether it be right in the sight of God to hearken unto you rather than unto God, judge ye,"[1] represented an immense change in the relation of the individual personality to society. We do not mean that this movement was peculiar to Christianity; the claim that man is amenable through his own reason and conscience to some greater authority than that of the State had been expressed many centuries before with a profound and moving eloquence in the 'Antigone,' and Sophocles was only anticipating the movement of thought and feeling of which the philosophical conception of the equal individual personality is the form.

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[1] Acts of the Apostles, iv. 19.

It was perhaps no great wonder that in the first clash of the yet unsolved antinomy of the freedom of the individual and the authority of society, men should have found the explanation in the poetic tradition of that catastrophe by which, as they thought, the innocent liberty of the primæval world, in which men were good and happy, had been lost, and a harsher and sterner order had been required to preserve at least some relics of the gracious past. For this is also the meaning of that law of nature of which philosophers and jurists and Christian Fathers spoke; it expressed principles which might not be wholly realised, but which should at least limit and direct and control the authority of human society, while the positive law and order of society embodied the disciplinary measures which the faults and vices of human nature, as it actually is, required.

Such, at any rate, was the theory of the nature of the institutions of society which the Middle Ages inherited from the post-Aristotelian philosophy through the Roman Law and the Fathers, and we have endeavoured in previous volumes to show how these conceptions were expressed both in the legal and general literature of those ages. It is not necessary to add much by way of illustrating the continuance of the same conceptions in the thirteenth century. We have in the second and third volumes of this work illustrated this from the works of the Civil and Canon Lawyers, and even from the Feudal Jurists, and here, therefore, we only cite one or two further examples.

The first occurs, in that oddly irrelevant and rhetorical manner which is characteristic of the Fathers and of most of the mediæval writers, in the introduction to a Constitution of the Emperor Frederic II. of the year 1239, in which he appointed his son Henry Vicar-General of Tuscany. The Constitution represents Justice as establishing the authority of princes in order to restrain the insolence of transgressors, for men would gladly have avoided the yoke of lordship, and would never have surrendered that liberty which they had received from nature if it had not been that the license of wicked men was actually inflicting grave injuries on the human race, and this compelled nature to submit to justice and liberty to obey judgment.[1] The rotundity of the phrases is sufficiently absurd, though it is characteristic of the Bologna Jurists when they were in a rhetorical mood, but they represent the contrast between the natural and the conventional conditions of human life.

The other example which we cite is even more significant, for it is to be found in the works of Albert the Great, the teacher of St Thomas Aquinas, and with him we are on the verge of the recovery of the Aristotelian political theory. In his 'Summa Theologica' he cites the contention that the subjection of man to man is either actually slavery or has something of its character, and was established on account of sin, as is evident from the curse of Noah upon Canaan. For Gregory the Great had said that nature brought forth all men equal, and therefore that pride which leads a man to desire to be set over his fellow-men is contrary to nature.[2]

As we have said, it is needless to multiply examples of what had been for many centuries the accepted tradition, that the institution of coercive government was regarded as a convention, which did not arise from nature, but was due to the appearance of evil in the world. The pre-Thomist writers of the thirteenth century did not, as far as we have observed, add anything material to the tradition.

It is not our part in this work to deal with the history of the recovery of the Aristotelian writings; the subject has been discussed in various works. And we are not here concerned with the far-reaching effects of this in the development of the general philosophic system of the Middle Ages. That is again a large and important subject, with a literature of its own. It is enough for our purpose to observe that St Thomas Aquinas was in possession of the whole range of the work of Aristotle, including the Politics and the Ethics, and that he not only studied him carefully, but that his own work on politics represents the results of this study.

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[1] M. G. H., 'Const.,' vol. ii. 216.

[2] Albert the Great, 'Summa Theologica,' ii. Quæst. 26, Memb. i. 1.

It was with St Thomas that the Stoic and Legal and Patristic traditions, which had hitherto dominated the more abstract aspects of the Political Theory of the Middle Ages, began to be crossed by a new influence. In the traditional theory the great institutions of human society, coercive government, slavery, and property, are the results of the vicious desires and impulses of men, not of the original character of their true nature; but they were also the means by which these vicious impulses might be restrained or limited. In the terms of the Christian Fathers, they were at the same time the results of sin, and the divine remedies for sin.

St Thomas does not in all respects directly and categorically contradict these conceptions, but under the influence of Aristotle he does very carefully and clearly set out a conception of human society and its institutions which is fundamentally different. In order, however, that we may properly appreciate his position, we must consider separately his treatment of government, of property, and of slavery. We begin by considering the terms in which he describes human nature in its relation to government. If man could live alone, he says in his treatise, 'De Regimine Principum,' he would require no ruler, he would be king over himself under God, directing his actions by that reason which God has given to him. But this is not possible, for it is natural to man to be a social and political animal. He is driven to society by his own weakness in physical powers as compared with other animals; but in place of these, nature has given him reason and the power of speech, by which he can communicate with other men. Man must therefore live in society with other men, and by the use of his reason render and receive mutual help; and this society must be a political society, for without some system of rule it could not hold together.[1]

In the 'Summa Theologica' he sets out the same principles, but with rather more precision, and in contrast with the older view. He was confronted with the dogmatic statement of St Augustine, to which we have often referred, that in the state of innocence man was not under the lordship of man. He meets this by pointing out that the word "dominium" may be taken in two senses, as signifying the lordship of a man over his slave, or as the rule exercised by one man over other free men. In the first sense he admits that there would have been no lordship of man over man in the state of innocence, but in the second sense the rule of man over man would have been lawful even in that state. And, he goes on to say, this would have been so for two reasons: first, because man is naturally a social animal, but social life is impossible unless there is some authority to direct it to the common good; and secondly, because it would have been "inconveniens" if any one man excelled the others in knowledge and justice, that this superiority should not be used for the benefit of the others.[1]

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[1] St Thomas Aquinas, 'De Regimine Principum,' i. 1; "Et si quidem homini conveniret singulariter vivere, sicut multis animalium, nullo alio dirigente indigeret ad finem, sed ipse sibi unusquisque esset rex sub Deo summo rege, in quantum per lumen rationis, divinitus datum sibi, in suis actibus se ipsum dirigeret. Naturale autem est homini ut sit animal sociale et politicum, in multitudine vivens, magis etiam quam omnia animalia: quod quidem naturalis necessitas declarat. Aliis enim animalibus natura preparavit cibum, tegumenta pilorum, defensionem, ut dentes, cornua, ungues, vel saltem velocitatem ad fugam. Homo autem institutus est nullo horum sibi a natura preparato, sed loco omnium data est ei ratio, per quam sibi hæc omnia officio manuum posset preparare, ad quæ omnia preparanda, unus homo non sufficit. Nam unus homo per se sufficienter vitam transigere non posset. Est igitur homini naturale quod in societate multorum vivat. . . . Est igitur necessarium homini, quod in multitudine vivat, ut unus ab alio adjuvetur et diversi diversis inveniendis per rationem occuparentur. . . . Hoc etiam evidentissime declaratur per hoc, quod est proprium hominis locutione uti, per quam unus homo aliis suum conceptum totaliter potest exprimere. Alia quidem animalia exprimunt mutuo passiones suas in communi, ut canis in latratu iram, et alia animalia passiones suas diversis modis. Magis igitur homo est communicativus alteri, quum quodcunque aliud animal quod gregale videtur, ut grus, formica, et apis. . . . Si ergo naturalis est homini quod in societate multorum vivat, necesse est in hominibus esse per quod multitudo regatur, multis enim existentibus hominibus, et uno quoque id quod est sibi congruum providente, multitudo in diversa dispergeretur, nisi etiam esset aliquis de eo, quod ad bonum multitudinis pertinet, curam habens: sicut et corpus hominis, et cujuslibet animalis deflueret, nisi esset aliqua vis regitiva communis in corpore, quæ ad bonum commune omnium membrorum intenderet."

The correspondence between St Thomas' conception of the relation of man to political society and that of Aristotle requires no discussion. The relation of these two passages to the first chapters of the first book of Aristotle's Politics is evident, and it is also evident that the principles which St Thomas was setting out were really contradictory to the Stoic and Patristic tradition which till this time dominated the Middle Ages. To St Thomas the State, or Political Society, was a natural, not a conventional institution.

As we have already said, the question of the permanence of this recovery of Aristotelianism is one which we shall have occasion to consider in the next volume. It is enough for us to observe that the immense influence of St Thomas had almost immediate effect, and we shall find the best illustration of this in the work of Egidius Colonna in the latter years of the thirteenth century.

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[1] Id., 'Summa Theologica,' i. 96, 4: "Ad quartum sic proceditur. Videtur quod homo, in statu innocentiæ homini non dominabatur: dicit enim August. 'De Civ. Dei' (xix. 15). 'Hominem rationalem ad imaginem suam factum, non voluit Deus nisi irrationabilibus dominari, non hominem homini, sed hominem pecori.' . . . Respondeo dicendum, quod dominium accipitur dupliciter. Uno modo, secundum quod opponitur servituti: et sic dominus dicitur, cui aliquis subditur, ut servus. Alio modo accipitur dominium, secundum quod communiter refertur ad subjectum qualitercumque: et sic etiam ille, qui habet officium gubernandi et dirigendi liberos, dominus dici potest: primo ergo modo accepto dominio, in statu innocentiæ homo homini non dominaretur: sed secundo modo accepto dominio, in statu innocentiæ homo homini dominari potuisset. . . . Tunc vero dominatur aliquis alteri ut libero, quando dirigit ipsum ad proprium bonum ejus qui dirigitur, vel ad bonum commune: et tale dominium hominis ad hominem in statu innocentiæ fuisset, propter duo. Primo, quia homo naturaliter est animal sociale: unde homines in statu innocentiæ socialiter vixisseut: socialis autem vita multorum esse non posset, nisi aliquis praesideret, qui ad bonum commune intenderet: multi enim per se intendunt ad multa, unus vero ad unum: et ideo Philos dicit, in princ. Politic: quod quandocumque multa ordinantur ad unum, semper invenitur unum ut principale et dirigens. Secundo, quia si unus homo habuisset super alium supereminentiam scientiæ, et justitiæ, inconveniens fuisset, nisi hoc exequeretur in utilitatem aliorum."

Egidius' treatise, 'De Regimine Principum,' is obviously and explicitly related to the Aristotelian Politics, to which he constantly refers, and it was directly or indirectly from St Thomas that he had learned to know Aristotle. He gives an account of the reasons why the State (civitas) was created which is founded immediately upon the "Politics"—namely, that men might live and have enough, and that they might live well and virtuously.[1] He asks why, if this is so, if man is naturally political (civilis), there are some who do not live thus, and he answers, some because they are too poor (meaning by this, presumably, a pastoral or hunting people), some because they are vicious and criminal, and some because they seek a more perfect life of contemplation. And it is in this sense that he interprets Aristotle's saying that he who is unable to live in society, or who has no need because he is sufficient in himself, must be either a beast or a god.[2] In the following chapter he explains the statement that the State is natural, first, by contending that it is the proper development of the family and the village, and secondly, by an appeal to Aristotle's principle that the nature of a thing lies in its end or perfection.[3]

We can then trace very clearly the development in the latter part of the thirteenth century of a new conception in political theory, and can recognise in St Thomas Aquinas and Egidius Colonna the effect of the recovery of the Aristotelian philosophy and its conception of the State, not as a conventional institution arising out of the vicious or sinful condition of human nature, but rather as the natural expression and embodiment of the moral as well as the physical characteristics of human nature. In order, however, to complete our appreciation of the nature of this change, we must consider how far we find the same principles in the treatment of the other great institutions of society, and especially of property and slavery.

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[1] Egidius Colonna, 'De Regimine Principum,' iii. 1, 2: "Constituta autem jam civitate et homines perspicaciores intuentes et videntes quod non satis est habere sufficientiam in vita nisi vivant bene et virtuose. Cum sine lege et justitia constituta civitas stare non posset, ordinarunt communitatem politicam quæ facta erat ad vivere et ad habendam sufficientiam in vita et ad bene vivere et ad vivere secundum legem et virtuose."

[2] Id. id., iii. 1, 3.

[3] Id. id., iii. 1, 4: "Nam finis generationis est forma quod per autonomasiam est quidem naturale et est ipsa natura."

We have in previous volumes set out the principles of the Fathers and the Canon Lawyers with regard to these, and have seen that to them it was clear that private property did not belong to the primitive order, but arose from the vicious and greedy appetities of men.[1]

It is interesting to observe that these were still the principles of Aquinas' great Franciscan predecessor in systematic theology, Alexander of Hales, who seems to be unaffected, at least in this matter, by the Aristotelian influence; but, as we shall see, both he and some of the Canonists of the middle of the thirteenth century were drawn by their study of the Roman Law to another interpretation of the "natural law." In one passage he discusses carefully the meaning of natural law, and asks whether it can be changed. He cites St Isidore of Seville as saying that by the natural law all property is common, and says that if now a man may lawfully possess a thing as his own, it would appear that the Lex Naturale is mutable. He replies to this that when it is said that by natural law all things are common, this refers to the condition of man before he sinned, but when man had sinned private property became lawful by natural law.[2] In another part of the same discussion he maintains that the natural law prescribes some things as of obligation, some things as good, and some as equitable. It is of obligation that in case of necessity all things are common. It is good that in the state of nature, when all things were well ordered, all things should have been common, but that in a corrupt state some things should be the property of particular persons, otherwise the wicked would take all and the good would be in want. It is equitable that some things should never be appropriated, while others which belong to no one should belong to the person who "occupies" them.[1]

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[1] Cf. vol. i. chap. 12; vol. ii. part ii. chap. 6.

[2] Alexander of Hales, 'Summa Theologiæ,' iii. Q. 27, M. 3, Art. 2: "'An lex naturalis mutabilis sit quantum ad præcepta juris naturalis?' . . . Isidorus: 'Jus naturale commune est omnium nationum: hoc jure communis est omnis possessio, et omnium una libertas.' Si ergo sanctio ista mutata est, ita ut meo jure sit aliquid proprium; patet quod mutabilis est lex naturalis quantum ad suas sanctiones et mandata. . . . Item in Decretis distinct. 8 (Gratian, Decretum D., viii. part i.). 'Differt jus naturale a consuetudine, nam jure naturali omnia sunt communia omnibus: jure vero consuetudinis et constitutionis, hoc meum est, illud vero alterius.' . . . Resolutio. Ad primam ergo rationem, quæ ostendit quod sit mutabile in se:

Alexander of Hales very clearly represents the patristic and normal mediæval view that private property did not belong to the primitive condition of innocence, but was the result of sin. It is to the influence of some phrases of the Roman Law [2] and to the recognition by some of the Bologna Civilians like Azo that the term "jus naturale" could be used in different senses,[3] that we may trace Alexander's conception that in one sense private property may be related to natural law. His assertion that in the case of necessity all

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dicendum, quod jure naturali essent omnia communia, et omnium una libertas, hoc fuit ante peccatum, et post peccatum quædam sunt quibusdam propria, et hæc duo sunt per legem naturalem."

[1] Id. id. id., Q. 27, M. 4, Art. 3: "Hoc habito quæritur propter illud, quod dicitur in definitione Isidor: 'Communis omnium possessio.' Utrum de lege naturali siut omnia communia. . . . Sol: Dicendum, quod lex naturalis circa communionem et proprietatem dictat differenter. Dictat enim aliquid quia debitum, et aliquid quia bonum, aliquid quia æquum. Quia debitum dictat, quod in statu necessitatis sint omnia communia: in statu enim isto sunt omnia communicanda; et hoc modo in precepto est communicatio: hoc est dictamen respectu rerum ad sustentationem personarum, et inde sumitur. . . . Aliter dictat circa communionem et proprietatem aliquid quia bonum quia in statu naturæ bene institutæ dictabat omnia esse communia: in statu vero naturæ corruptæ dictabat, quod bonum est esse aliqua propria: alioquin boni egerent, et non staret societas humana, quia mali raperent omnia: et in secundum diversos status dictat bonum esse, quod omnia siut communia, et quod aliqua sint propria. Dictat enim circa proprietatem et communionem aliquid quia æquum, et secundum dictamen æquitatis dictat, quædam esse inappropriabilia, ut ærem, mare, littora: dictat etiam, quod ea quæ siut appropriabilia, si in nullius sint bonis, occupanti concedantur: . . . Et hinc est acquisitio eorum, quæ cœlo, terra, marique capiuntur; ut captio avium et piscium: sicut dicunt leges humanæ."

[2] Cf. vol. i. pp. 51-54.

[3] Cf. vol. ii. pp. 28-33.

things are common is related to the theory of the Fathers and of the Canonists,[1] and we shall return to the subject when we deal presently with the theory of property in St Thomas Aquinas.

When we turn from Alexander of Hales to the Canonists of the middle of the thirteenth century, we find the same combination of the influence of the Patristic tradition and of the Roman Law. Innocent IV., in his 'Apparatus,' or Commentary on the Decretals, discusses the origin and rationale of private property in terms which are related to both traditions. The earth, he says, is the Lord's; He is the creator of all things, and in the beginning of the world these were the common property of all men. It was by the custom of our first ancestors that private property arose; but this was good, not evil, for things which are common property are apt to be neglected, and the common ownership of things tends to discord. Men were therefore permitted to take by occupation that which belonged to no one but to God.[2] The great Canonist whom we know as Hostiensis defines carefully the nature of possession, and says that it is natural—that is, it was created by the "natural law of nations," not by the primeval law which belonged to all animals.[3]

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[1] Vol. i. chap. 12; vol. ii. part ii. chap. 6.

[2] Innocent IV., 'Apparatus ad quinque libros Decretalium,' iii. 34, 8: "Et nos respondemus quod in veritate Domini est terra, et plenitudo ejus, orbis terrarum et universi qui habitant in ea. Ipse enim est creator omnium, idem ipse Deus hæc omnia fecerat, ut habemus in i. c. Gen. Et hæc a principio seculi fuit communis, quo usque usibus priorum parentum introductum est quod aliqui aliqua, et alii alia sibi appropriaverunt. Nec fuit hoc malum, immo bonum, quia naturale est res communes negligi, et communio discordiam parit, et fuerunt a principio cujuscunque qui occupavit, quia in nullius bonis erant nisi Dei. Et ideo licebat cuilibet occupare quod occupatum non erat, sed ab aliis occupatum, occupare non licebat, quia fiebat contra legem naturæ, qua cuilibet inditum est, ut alii non faciat, quod sibi non vult fieri."

[3] Hostiensis, 'Summa super titulis Decretalium,' ii., 'De Causa Possessionis,' i.: "Quid sit possessio? Corporalis rei detentio, corporis et animi juris adminiculo concurrente. . . . Hæc autem possessio, quum quis corpore et animo suo adipiscitur, naturalis est, ff. eo. l. 1 (Digest 41, i. 1). Sive de jure naturali gentium inducta vel approbata, non dico de jure primævo, communi omnibus animalibus. Inst. de iu. na. gen. et ei. in prin. (Institutes, i. 2, 1)."

It is clear that these writers did not look upon private property as strictly primitive, but that it was created by human custom. If they sometimes call it "natural," this is due to the ambiguity of some of the phrases of the Roman Law and the Bologna Civilians. They still represent the Patristic and Stoic conception of property as, properly speaking, a conventional and not a natural institution.

When we now turn to the treatment of private property by St Thomas Aquinas, we find ourselves in a very different atmosphere. He was, indeed, confronted at the outset with the dogmatic statements of the Fathers, and especially of St Ambrose, that nature had given all things to men in common, that God meant the world to be the common possession of all men and to produce its fruits for all, and that avarice produced the rights of possession.[1] He puts the question with characteristic fairness and precision in the 'Summa Theologica.' It is contended, he says, that it is not lawful for a man to possess anything as his own, for everything which is contrary to natural law is unlawful, and according to natural law all things are common, and he refers to St Basil, St Ambrose, and Gratian's Decretum as representing this view. He replies by making a distinction in the relations of men to things as property; the first consists in the power of acquiring and distributing things, and this is lawful, for it tends to efficiency and to the tranquillity of society; the second is their use, and as far as this is concerned men should hold them in common.

In the detailed answers, which in his method follow the general one, he replies to the contention that by natural law all things are common, and says that this does not mean that the natural law prescribed that all things are to be in common, and nothing is to be held as an individual possession, but that it is not the natural law which establishes the separation of possessions, but human agreement, and this belongs to positive law. Private property is therefore not contrary to natural law, but is added to natural law by human reason.[1]

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[1] Cf. vol. i. chap. 12.

It is true that in this passage St Thomas does not refer directly to Aristotle, but it is fairly clear that his arguments are in large measure founded upon the discussion of the subject in 'Politics,' ii. 5, including the important distinction between the right of acquisition and the right of use. The principles laid down by St Thomas in this passage may be further illustrated from two other places in the 'Summa.' In the seventh article of the same "question," he discusses more fully the significance of the principle that, as far as the use of things is concerned, the common right of property continues. He considers the question whether it is lawful to steal in case of necessity, and cites the 'Decretals' as imposing a penance of three weeks upon the man who commits theft from hunger, and St Augustine as saying that it was not lawful to steal in order to give alms. St Thomas dogmatically asserts the contrary, and maintains that in a case of necessity all things are common, and that in such a case it is not sinful to take another man's property. He justifies this by a detailed argument. The institution of human law cannot abrogate the natural or Divine law, and according to the natural order which was instituted by the Divine providence, the inferior things were to serve men's needs, and therefore the division or appropriation of things which was instituted by human law may not hinder their use for this purpose, and, therefore, if any man possesses a superfluity of things, the natural law requires that this should be used for the maintenance of the poor. The administration of this help is normally left to the discretion of the owner of superfluous property; but if there is evident and urgent need, and there is no other means of help, then a man may openly or secretly take another man's property for his need, and this has not properly the character of theft; and, he adds, in a case of the same need, it is lawful to take another man's property to help one's neighbour who is in want.[1]

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[1] St Thomas Aquinas, 'Summa Theologica,' 2. 2, 66, 2: "Ad secundum sic proceditur. Videtur, quod non liceat alicui rem aliquam quasi propriam possidere: omne enim quod est contra jus naturale est illicitum: sed secundum jus naturale omnia sunt communia: cui quidem communitati contrariatur proprietas possessionum: ergo illicitum est cuilibet homini appropriare sibi aliquem rem exteriorem . . . Respondeo dicendum, quod circa rem exteriorem duo competunt homini: quorum unum est potestas procurandi et dispensandi: et quantum ad hoc licitum est, quod homo propria possideat; est etiam necessarium ad humanam vitam, propter tria. Primo quidem, quia magis sollicitus est unusquisque ad procurandum aliquid, quod sibi soli competit, quam id, quod est commune omnium vel multorum: quia unusquisque laborem fugiens, relinquit alteri id, quod pertinet ad commune; sicut accidit in multitudine ministrorum. Alio modo, quia ordinatius res humanæ tractantur, si singulis immineat propria cura alicujus rei procurandæ; esset autem confusio, si quilibet indistincte quælibet procuraret. Tertio, quia per hoc magis pacificus status hominum conservatur, dum unusquisque re sua contentus est: unde videmus, quod inter eos qui communiter, et ex indiviso aliquid possident, frequentius jurgia oriuntur. Aliud vero, quod competit homini circa res exteriores, est usus ipsarum: et quantum ad hoc non debet homo habere res exteriores ut proprias, sed ut communes; ut scilicet de facili aliquis eas communicet in necessitate aliorum: unde apostolus dicit, I. Ad Timoth: ult. 'Divitibus hujus sæculi præcipe facile tribuere, communicare de bonis,' &c.

Ad primum ergo dicendum, quod communitas rerum attribuitur juri naturali: non quia jus naturale dictet omnia esse possidenda communiter, et nihil esse quasi proprium possidendum; sed quia secundum jus naturale non est distinctio possessionum, sed magis secundum humanum condictum, quod pertinet ad jus positivum, ut supra dictum est (Q. 57, Art. ii.); unde proprietas possessionum non est contra jus naturale, sed juri naturali superadditur per adinventionem rationis humanæ."

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[1] Id. id., 2. 2, 66, 7: "Sed contra est, quod in necessitate sunt omnia communia, et ita non videtur esse peccatum, si aliquis rem alterius accipiat, propter necessitatem sibi factam communem. Respondeo dicendum quod ea quæ sunt juris humanæ, non possunt derogari juri naturali, vel juri divino: secundum autem naturalem ordinem ex divina providentia institutum, res inferiores sunt ordinatæ ad hoc, quod ex his subveniatur hominum necessitati; et ideo per rerum divisionem, et appropriationem ex jure humano procedentem non impeditur quin hominis necessitati sit subveniendum ex hujusmodi rebus; et ideo res, quas aliqui superabundanter habent, ex naturali jure debentur pauperum sustentationi; unde Ambrosius: dicit (Sermo. 64, De Temp.), et habetur in Decret: Dist. 47 (Gratian, Decretum, Dist. 47, 8. 4). 'Esurientium panis est, quam tu detines; nudorum indumemtum est: quod tu recludis: miserorum redemptio et absolutio est pecunia quam tu in terram defodis': sed quia multi sunt necessitatem patientes, et non potest ex eadem re omnibus subveniri, committitur arbitrio uniuscujusque dispensatio propriarum rerum, ut ex eis subveniat necessitatem patientibus: si tamen adeo sit evidens et urgens necessitas, ut manifestum sit instanti necessitati de rebus occurrentibus esse subveniendum (puta cum imminet personæ periculum, et aliter subveniri non potest) tunc licite potest aliquis ex rebus alienis suæ necessitati sub-

In a very important section of the 'Summa,' to which we shall return later, where he deals in detail with the whole conception of natural law, he recognises very frankly the weight of the tradition that by natural law all things are common. He quotes the famous passage from the 'Etymologies' of St Isidore of Seville, in which, as the Middle Ages understood it, this doctrine is set out, but he replies to it by the contention that while natural law did not create private property, this was established by human reason, because it was useful to human life, and thus natural law was not changed but only added to.[1]

The position of St Thomas with regard to the institution of private property represents an attempt to harmonise the principles of the Fathers with those of Aristotle. He is not prepared, in face of the patristic authority, to maintain that it is "natural" in the proper sense of the word, but he refuses to admit that it is a consequence of sin. It is a "conventional" institution, but an institution created by human reason, for the advantage of human life. But also, it is limited by the principle of the natural law that material things were intended by God to meet the needs of men, and therefore he understands the right of private property to be the right to acquire and to control the destination of material things, but not an unlimited right to use them for one's own convenience.

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venire, sive manifeste, sive occulte sublatis: nec hoc proprie habet rationem furti vel rapinæ. . . . Ad tertium dicendum, quod in casu similis necessitatis etiam potest quis occulte rem alienam accipere, ut subveniat proximo sic indigenti."

[1] Id. id., 1. 2, 94, 5: "Isidorus dicit in lib. v. etym. (v. 4) 'Quod communis omnium possessio, et una libertas, est de jure naturali': sed hæc videmus esse mutata per leges humanas; ergo videtur quod lex naturalis sit mutabilis. . . . Ad tertium dicendum, quod aliquid dicitur esse de jure naturali dupliciter: uno modo, quia ab hoc natura inclinat; sicut non esse injuriam alteri faciendam: alio modo, quia natura non inducit contrarium: sicut possemus dicere, quod hominem esse nudum est de jure naturali; quia natura non dedit ei vestitum, sed ars adinvenit: et hoc modo 'communis omnium possessio et una libertas' dicitur esse de jure naturali: quia scilicet distinctio possessionum, et servitus non sunt inductæ a natura: sed per hominum rationem ad utilitatem humanæ vitæ, et sic etiam in hoc lex naturæ non est mutata nisi per additionem."

We turn to the theory of slavery. We have seen that the Canonists and Civilians were agreed that slavery was not an institution of the natural law, and the Canonists held that it was a consequence of sin.[1] Innocent IV. thus merely restated the traditional doctrine when he said that the lordship over men as property belongs to the law of nations or the civil law, for by the law of nature all men are free.[2] Hostiensis, indeed, describes slavery as created by the divine law, confirmed by the law of nations, and approved by the Canon Law; but he probably does not mean by this more than that it was a divine punishment and remedy for sin, the doctrine both of the Fathers and the Canonists.[3]

St Thomas endeavoured to bring together the tradition which he inherited from the Stoics and the Fathers with what he had learned from Aristotle. In one place he maintains that in the state of innocence there was government, but no slavery. It is of the essence of slavery that while the free man is "causa sui," the slave "ordinatur ad alium," and is used by the master for his own advantage, and this could not have existed in the state of innocence.[4] In another place, however, he deals with the question in more detail, and explains the nature of slavery under different terms. St Thomas in this place is discussing directly the relation of the jus gentium to the jus naturale (we shall return to this subject later), and his reference to slavery is incidental to this discussion. He first states his reasons why it might be contended that the "jus gentium" is the same as the "jus naturale," and the second of these reasons is that while Aristotle says that slavery is natural, for some men are naturally slaves, St Isidore says that slavery belongs to the jus gentium; the jus gentium, therefore, is the same as the jus naturale. Against this he cites St Isidore as distinguishing between natural law, civil law, and the law of nations. He endeavours to solve this opposition by arguing that *jus* may be said to be natural in two different senses, in the absolute sense, or in relation to its consequences. The *jus gentium* represents that which man's natural reason declares with regard to the consequences of *jus*. Slavery, therefore, belongs to the *jus gentium*, and is natural, not in the absolute sense, but because it is useful for the slave to be controlled by the wiser man, and for the wiser man to be helped by the slave.[1]

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[1] Cf. vol. ii. part i. chap. 4; part ii. chap. 5.

[2] Innocent IV., 'App. in quinque lib. dec.,' iii. 34, 8: "Super homines autem quasi super suos nullus habuit dominium, nisi de jure gentium vel civili. Natura enim omnes homines liberi sunt. Inst. de libert" (Inst. i. 5).

[3] Hostiensis, 'Summa Sup. Tit. Dec.,' v., 'De servis Iudæorum et Saracenorum,' 5: "Sed numquid servus baptizatus manebit servus sicut prius. Sic nam et servitus de jure divino est introducta, 36 Dist. Sexto. (Gratian, Decretum, D. 35, 8) et confirmata de jure gentium, i. Dist. jus gentium. (Gratian, Decretum, i. 9) et de jure canonico approbata, ii. Quæst. 2 ab illo. C. si quis de servis, usque ad C. ecclesiarum servos (Gratian, Decretum, C. xii. 2, 57-69). Puto tamen quod non est desæviendum in eum, sicut prius, imo est inter alios servos non Christianos tractandum leniter et benigne, arg. S̄. De maio. et obe. per tuas (Decretals, i. 33, 7). Nam nec in servum aliquem est nimis acriter sæviendum, Inst. De his qui sui juri vel alie. sunt. Dominorum (Inst., i. 8)."

[4] St Thomas Aquinas, 'Summa Theologica,' i. 96, 4: "Præterea. Illud quod est introductum in pœnam peccati, non fuisset in statu innocentiæ: sed hominem subesse homini introductum est in pœnam peccati . . . Respondeo dicendum, quod dominium accipitur dupliciter. Uno modo, secundum quod opponitur servituti: et sic dominus dicitur cui aliquis subditur, ut servus. Alio modo accipitur dominium, secundum quod communiter refertur, ad subjectum qualitercumque: et sic etiam ille, qui habet officium gubernandi, et dirigendi liberos, dominus dici potest; primo ergo modo accepto dominio, in statu innocentiæ

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homo homini non dominaretur: sed secundo modo accepto dominio, in statu innocentiæ homo homini dominari potuisset. Cujus ratio est, quia servus in hoc differt a libero, quod 'liber est causa sui' ut dicitur in Metaph. (Cap. ii.): 'Servus autem ordinatur ad alium'; tunc ergo aliquis dominatur alicui ut servo, quando eum, cui dominatur, ad propriam utilitatem sui, scilicet dominantis, refert. Et quia unicuique est appetibile proprium bonum; et per consequens contristabile est unicuique, quod illud bonum, quod deberet esse suum cedat alteri tantum: ideo tale dominium non potest esse sine pœna subjectorum: propter quod, in statu innocentiæ non fuisset tale dominium hominis ad honinem."

[1] Id. id., ii. 2, 57, 3: "Præterea. Servitus inter homines est naturalis: quidem enim sunt naturaliter servi, ut philos. probat in I. Polit. (chaps. 3 and 4): sed servitutes pertinent ad jus gentium, ut Isid: dicit (Lib. v. Etym. Cap. vi.): ergo jus gentium est jus naturale. . . . Sed contra est, quod Isid: dicit (Lib. iv. Etym. Cap. iv.) quod 'jus aut naturale est, aut civile, aut gentium': et ita jus gentium distinguitur a jure naturale.

Respondeo dicendum, quod sicut dictum est (Art præc.) jus, sive justum naturale est, quod ex sui natura est adequatum, vel commensuratum alteri: hoc autem potest contingere dupliciter: uno modo secundum absolutam sui considerationem: sicut masculus ex sui ratione habet commensurationem ad feminam ut ex ea generet; et parens ad filium ut eum nutriat: alio modo aliquid est naturaliter alteri commensuratum, non secundum abso-

In another passage, to which we have already referred, he contends that slavery, like private property, was not indeed instituted by nature, but was created by man's reason for the convenience of human life, and represents not a contradiction of the natural law, but an addition to it.[1]

It is not very easy to arrive at a confident judgment with regard to the whole of St Thomas' position as regards slavery. For while in some places he seems to follow Aristotle in his judgment that slavery rests upon the ground that there are men for whom it is better to be slaves than to be free, and that slavery is therefore an institution of human reason, in others he seems to speak of it as an institution which could not have existed in the natural or primitive state of innocence.

We may perhaps suggest that he meant that in the state of innocence there would have been no such difference in human nature as to justify the relation of master and slave, but that, as these differences exist in the actual conditions of human nature, the relation has become natural and justifiable. Slavery would thus be an institution not belonging to the natural condition of human nature, but rational, and in the secondary sense natural in the actual corrupt and sinful conditions. His treatment of slavery seems, therefore, to differ from his treatment of government and property, for these are not the results of sin, while slavery is.

The followers of St Thomas Aquinas, Ptolemy of Lucca

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lutam sui rationem, sed secundum aliquid, quod ex ipso sequitur; puta proprietas possessionum. . . . Considerare autem aliquid, comparando ad id quod ex ipso sequitur, est proprium rationis, et ideo hoc idem est naturale homini secundum rationem naturalem, quæ hoc dictat: et ideo dicit Caius jurisconsult (Lib. ix. ff. cod. (Digest, 1. 1, 9)): 'Quod naturalis ratio inter omnes homines constituit, id apud omnes peræque custoditur, vocaturque jus gentium' . . . . . . Ad secundum dicendum, quod hunc hominem esse servum, absolute considerando, magis quam alium, non habet rationem naturalem, sed solum secundum aliquam utilitatem consequentem, in quantum utile est huic, quod regatur a sapientiore, et illi quod ab hoc juvetur; ut dicitur in Polit. (Cap. v.) et ideo servitus pertinens ad jus gentium est naturalis secundo modo, sed non primo modo."

[1] Id. id., 1. 2. 1, 94, 5: "Quia scilicet, distinctio possessionum et servitus non sunt inductæ a natura: sed per hominum rationem ad utilitatem humanæ vitæ, et sic etiam in hoc lex naturæ non est mutata nisi per additionem."

and Egidius Colonna, seem to accept the Aristotelian conception of slavery without any apparent qualification. Ptolemy of Lucca, in that part of the 'De Regimine Principum' which is generally attributed to him, says that some men are, through a defect of nature, wanting in reason, and such persons should be set to work "per modum servile," because they have not got the use of reason. This may be called naturally just, as Aristotle says in the first book of the Politics.[1] Egidius Colonna in the same way assumes without question that there are men who are naturally slaves, for they are deficient in intelligence, and cannot rule themselves.[2]

We have said enough to illustrate the nature and the extent of the influence of the recovery of the Aristotelian Politics on St Thomas Aquinas and some other writers of the end of the century in modifying the traditional Stoic and Patristic principles, which had up till this time formed the framework of mediæval political theory. We shall presently have occasion to consider how far this affected the less formal aspects of their theory, and we shall then be in a better position to judge how far the influence of Aristotle was really and not merely formally important.

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[1] St Thomas Aquinas (Ptolemy of Lucca), 'De Regimine Principum,' ii. 10: "Videmus enim in elementis esse infirmum et supremum, videmus etiam in mixto semper esse aliquod predominans elementum. . . . Ita inter homines erit, et inde probatur esse aliquos omnino servos secundo naturam. Amplius autem contingit aliquos deficere a ratione propter defectum naturæ: tales autem oportet ad opus inducere per modum servile, quia ratione uti non possunt, et hoc justum naturale vocatur."

It was at one time thought that the whole of this treatise was by St Thomas Aquinas, but it is now agreed that only a part, the first book, and some chapters of the second, are by him, while the rest is now generally attributed to Ptolemy of Lucca.

For a full discussion of this question, cf. Grabmann, 'Die echten Schriften des Hl. Thomas von Aquino.'

[2] Egidius Colonna, 'De Regimine Principum,' preface: "Sicut est naturaliter servus qui pollens viribus deficit intellectu: sic vigens mentis industria et regitiva prudentia, naturaliter dominatur."

I. 2, 7: "Ex hoc est aliquis naturalis servus: quia deficit intellectu et nescit se ipsum regere."

For a careful account of Egidius Colonna, cf. R. Scholz, 'Die Publizistik zur zeit Phillips des Schönen und Bonifaz,' viii.

CHAPTER III.

THE DIVINE NATURE AND THE MORAL FUNCTION OF THE STATE.

We have endeavoured in previous volumes to set out clearly the post-Aristotelian and mediæval conceptions of the conventional nature of the great institutions of human society as being the results of human vice and sin; and that these were conceived of as being divinely appointed remedies for sin. It is from this standpoint alone that we can understand the mediæval conception of the nature and principles of the State and its authority.

We have dealt with the subject in detail, as it is presented by the Canonists and Civilians, in the second volume, and in the general and controversial literature of the eleventh, twelfth and thirteenth centuries in the second and third. We hope that we have said enough to show that the judgment of the Middle Ages was clear and continuous, that while the coercive political authority of man over his fellow-men was made necessary by sin, it was appointed by God as a remedy for sin. The State was a divine institution, whose purpose and function it was to maintain righteousness or justice.

In the second part of this volume we shall return to the question of the relations of the two powers, the Spiritual and the Temporal, but we hope that it is evident from previous volumes that, whatever opinion might be held about this relation, there was no real difference as to the principle that the authority of the Temporal Power was a divine authority. Whatever confused ideas St Augustine may have had in setting out the distinction between the Civitas Dei and the

Civitas Terrena, even if he meant to suggest (and we do not think that he meant to do this) that the Civitas Terrena was not a divine institution,[1] the confusion, if it existed in his mind, began and ended with himself, and it is an inexcusable blunder to overlook this fact. If Gregory VII. had for a moment inclined to think—and we have given reason to think it was only for a moment—that the independence and authority of the Spiritual Power would be best vindicated by denying the divine nature and authority of the State, it is clear that he had substantially no followers in the eleventh and twelfth centuries.[2]

In this chapter we propose to give a short account of what the writers of the thirteenth century say upon this matter, and especially we shall endeavour to summarise the careful statements of St Thomas Aquinas; but it must be frankly confessed that there is little if anything of substantial importance to be added to what has been said in earlier volumes.

We would begin by drawing attention to a writer whose most famous work forms one of the series of encyclopædic dictionaries of the Middle Ages. For the 'Speculum' of Vincent of Beauvais belongs to the same series of works as St Isidore of Seville's 'Etymologies' in the seventh century, and Rabanus Maurus' 'De Universo' in the ninth; the fashion of encyclopædias is not peculiar to the eighteenth or the nineteenth century. Vincent of Beauvais' work belongs to the middle of the thirteenth century. It has naturally little, if any, independent or personal value, but it is interesting as summing up much of the general knowledge and many of the conceptions of his time—that is, just before the development of the Aristotelian influence on political theory.

Among other matters he deals with the nature of the State. Among the first passages which he cites on this is Cicero's definition of the "Populus" as "Cœtus humani multitudinis, juris consensu, et concordi communione sociatus"; he takes this from St Isidore's 'Etymologies,' ix. 4. He is aware of St Augustine's criticism of this,[3] but though Vincent mentions this it does not seem to affect his judgment, for he goes on, in terms which would seem to be related to those of John of Salisbury, to describe the proper character of the prince as that of one who seeks to promote "æquitas." A little later he cites from Gratian's 'Decretum' the famous passage in which Pope Gelasius I. had laid down the fundamental mediæval principle that it was Christ Himself who separated the two powers, the Spiritual and the Temporal, and that it was Christ Himself who allotted to each its supreme functions. And he cites a passage from Hugh of St Victor, in which he speaks of the Church, the holy "Universitas" of the faithful, the body of Christ, as being divided into two orders (ordines), the laity and the clergy, and each of these is to be animated by justice.[1] All these phrases represent the commonplaces of mediæval political theory, but they serve to bring out its normal principle, that the State is of divine origin, and that its end or purpose is a moral end—the maintenance of justice.

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[1] Vol. i. chaps. 13 and 14.

[2] Vol. iii. part ii. chap. 2.

[3] Cf. vol. i. pp. 165-170.

If these phrases represent the normal opinion of the Middle Ages, we may ask first how far they correspond with the opinions of the extreme Papalist writers of the thirteenth century. We may take a few examples. The first is from one of the most extreme of all Papalist writers, Ptolemy of Lucca, the continuator of St Thomas' 'De Regimine Principum,' with whose theory of the relation of the Temporal and Spiritual powers we shall deal later. He is clear and emphatic in maintaining that all temporal authority comes from God, who is the first ruler,[2] and this is evident in the nature of the end or purpose for which the State exists—that is, the life of virtue, and the attainment of eternal felicity—that is, the vision of God.[3]

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[1] Vincent of Beauvais, 'Speculum,' ii. 7. 7, 23, 31.

[2] Ptolemy of Lucca (St Thomas Aquinas), 'De Regimine Principum,' iii. 1: "Inde manifeste apparet a Deo omne provenire dominium sicut a primo dominante: quod quidem ostendi potest triplice via, quam philosophus tangit, quia vel in quantum ens, vel in quantum motor, vel in quantum finis." Cf. c. 2.

[3] Id. id., iii. 3: "Concluditur ergo ex hoc quod quælibet res quanto ordinatur ad eccellentiorem finem, tanto plus participat de actione divina. Hujusmodi autem est regnum cujus-

With these words we may compare those of Egidius Colonna, who, in one of his writings at least, represents the standpoint of the most extreme supporters of Boniface VIII. in his conflict with Philip the Fair of France. In his treatise, 'De Regimine Principum,' the King is the minister of God and the ruler of the multitude, and God requires Kings and Princes to rule the people with prudence and justice. In another place he contends that the King must be a man of such justice and equity that he can direct the laws.[1]

We may also observe the words of an anonymous writer, certainly one of the most determined and extreme of all the supporters of Boniface VIII., of whom we shall have more to say later. He has the courage to try to explain away the significance of the Gelasian principle of the division of the two powers; but even in doing so he does not venture to suggest that the Temporal power does not come from Christ, but only that both powers belong to the Pope, while the exercise of the Temporal Power belongs to the Prince.[2]

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cunque communitatis, seu collegii, sive politicæ, sive regalis, sive cujuscunque conditionis, quia cum intendat nobilissimum finem, ut philosophus tangit in I. Politicorum in ipso Divina præintelligitur actio, et suæ virtuti dominorum subjicitur regimen . . . Amplius, in regimine legislator semper debet intendere ut cives dirigantur ad vivendum secundum virtutem, immo hic est finis legis latoris, ut philosophus dicit in II. Ethic. . . . . Finis autem ad quem principaliter rex intendere debet in se ipso, et in subditis, est eterna beatitudo, quæ in visione Dei consistit. Et quia ista visio est perfectissimum bonum, maxime debet movere regem, et quemcunque dominum, ut hunc finem subditi consequantur: quia tunc optime regit, si talis in ipso sit finis intentus."

[1] Egidius Colonna (Romanus), 'De Regimine Principum,' i. 1, 12: "Sciendum quod decet regem maxime suam felicitatem ponere in ipso Deo, quod triplici via videre possumus. Rex enim est homo, est Dei minister, et est rector multitudinis. . . . Secundo decet principem suam felicitatem ponere in ipso Deo, non solum quia homo est, sed etiam speciali modo est Dei minister . . . Tertio hoc decet regem ex eo quod est multitudinis rector: nam regens multitudinem debet intendere commune bonum. . . . Si princeps est felix diligendo Deum, debet credere se esse felicem operando quæ Deus vult: maxime autem Deus requirit a regibus et principibus, ut per prudentiam et legem populum sibi commissum juste et sancte regaut."

Id. id., i. 2, 12: "Debet etiam rex esse tante justitie et tante equitatis: ut possit ipsas leges dirigere."

[2] Anonymous fragment (in Richard Scholz, 'Publizistik zur zeit Philipps des Schönen,' p. 476): "Item nec superbiant principes seculares de hoc, quod legitur, quod Christus, Mediator Dei et hominum, officia utriusque protestatis, scilicet, sacerdotalis et imperialis, discernit, et sic videtur quod

If, then, it is clear that even the most extreme Papalist writers recognised that the Temporal as well as the Spiritual Power came from God, it might seem almost unnecessary to illustrate this principle from the general literature of the time, and yet this is so important an aspect of the political ideas of the Middle Ages that it is worth while to illustrate it a little further. There is an interesting little treatise, 'De Regimine Civitatum,' by a certain Civilian, John of Viterbo, written, as would seem probable, not earlier than 1261, to which also we shall have occasion to return. It is interesting to observe the emphatic terms in which he sets out the divine nature of political as well as of ecclesiastical authority. Two great gifts, he says, God has bestowed upon man—these are the "sacerdotium" and the "imperium"; they have, indeed, different functions, but they proceed from the same source. Their functions are different, and this is indicated by the two swords which were brought to the Lord. It is not less important that, while the author is clear that the authority is good, for it comes from God, the exercise of that authority may be evil. The function of the authority is to promote justice, and the abuse of it has no divine authority.[1]

Papa non habet utramque potestatem, ut C. xvi. Dist. cum ad verum, et Dist. x. quoniam idem (Gratian, Decretum, Dist. 96, 10, 8). Nam signanter dicit officia distincta, non potestates divisas, quia utraque consumpta est et residet in Papa, qui habet potestatem utriusque gladii, spiritualis et temporalis, licet exercitium temporalis gladii competat principi seculari."

[1] John of Viterbo, 'De Regimine Civitatum,' 128: "Maxima in omnibus hominibus sunt dona Dei a superna collata clementia, id est, sacerdotium et imperium, illud quidem divinis ministrans, hoc autem humanis præsidens ac diligentiam exhibens; ex uno eodemque principio utraque procedentia, humanam exornant vitam. Nec multo differunt ab alter utro sacerdotium et imperium; per hoc autem datur intelligi duos gladios, scilicet, spiritualem et temporalem, fuisse sufficientes humano generi juxta verbum Domini. . . . . . . Unde colligitur ex hoc quod duo gladii in mensa domini fuissent appositi, quod, cum siut ad invicem diversi propter diversa officia, diversos meruerunt habere ministros; ut alter esset qui dignos verbis percuteret gladio, alter qui meritos ferri puniret instrumento. Imperium enim Deus de cælo constituit, Imperium autem semper est. . . . Licet autem abusio potestatis non sit a deo, ipsa tamen potestas a deo est. Inde scriptum est in jure civili et canonico, 'privilegium meretur amittere qui concessa sibi abutitur potestate' ('Decretals,' v. 33, 11). Item ab ipso Domino nostro Jesu Christo dictum fuit Pilato dicenti 'Potestatem habeo crucificendi et dimittendi te'. cui ipse Dominus ait

It would be superfluous to deal with the emphatic repetition of the Gelasian doctrine that the Temporal as well as the Spiritual Power was ordained by Christ in such a eulogist of the Empire as Jordan of Osnabrück,[1] or its frequent assertion in the Imperial Constitutions.[2] It is, however, worth while to notice one or two other of the statements that the purpose and the test of legitimate authority is justice.

There is a very interesting commentary on the statutes and constitution of the kingdom of Naples, to which we shall refer again, by Andreas de Isernia, a jurist of the school of Naples of the thirteenth century. He holds a high conception of the legislative power of the King of Naples, but he is clear that any law which is lacking in "ratio" or in justice is no law at all. The prince is appointed to do justice and judgment, and is not to be called a king when he departs from justice. In another place he applies this principle to the case of a king who intends to seize and ill-treat his vassal contrary to justice; the vassal in such a case is not disobedient if he refuses to obey the king's summons, for in such action the king is no king, and he will lose his rights over his vassal, just as the vassal would lose his fief if he did not render justice to his lord.[3]

'Potestatem in me non haberes ullum nisi datum esset tibi desuper.' Per hanc enim auctoritatem dicitur potestas bona et potestas mala esse a Deo tam Christianis quam Paganis et Judæis. Sed quod in mala potestate dicit, non debet ita indistincte intelligi; quoniam omnis potestas bona est, cum a Deo sit, qui est ipse bonitas summa; sed exercitium potestatis potest esse malum, quod non est a Deo juxta illud propheticum, 'Ipsi regnaverunt sed non ex me, principes extiterunt, sed non cognovi eos.' Dicitur ergo bona cum bene et juste utitur, videtur autem mala cum abutitur, sed et tunc potestas non est mala, sed abusio mala est." Cf. id., 127.

[1] Jordan of Osnabrück, 'De Prerogativa Romani Imperii,' viii.

[2] e.g., M. G. H., 'Const.,' vol. ii. 6; iii. 222.

[3] Andreas de Isernia, 'Peregrina an Agnosis (quam lectura vocant) ad omnes regni Neapolitani Constitutiones,' fol. 3, r: "Consuetudo autem irrationabilis est corruptela . . . lex carens ratione non est lex, sed legis corruptio secundum Augustinum in Libro de libero arbitrio, eo quod de substantia legis est quod sit justa, nec lex est quæ justa non est. . . . Nam nec princeps posset re mea sine culpa et causa me privare . . . fol. 4, r. Sed etiam princeps non posset statuere, quod debet ille solvam ego, quia re mea, me invito, sine mea culpa me privare non potest . . . alias reincidirem in errore Martini qui dicit omnia esse principis quoad proprietatem (cf. vol.

In one of the most important treatises which belong to the conflict between Boniface VIII. and Philip the Fair, John of Paris develops the principle of the moral purpose of the State still further. He argues that the contention that the royal authority only deals with material things is false, for the function of this authority is to set forward the common good—that is, not merely the common good in general, but that good which consists in the life which is according to virtue. This is what Aristotle meant when he said that the aim of the legislator is to make men good and to lead them to virtue.[1]

We cannot here pursue John of Paris' arguments further—we shall return to them later,—but it is interesting to observe that the Aristotelian influence only served to bring out and to strengthen the traditional mediæval doctrine that the function and justification of political authority was its moral end.

St Thomas Aquinas does not add anything material to these principles, but he sets them out with characteristic precision and force. He is equally emphatic in asserting the divine nature of political authority, and the moral end or purpose for which this exists. In one place in the 'Summa Theologica' he discusses the question whether Christian men are bound to obey the secular authorities. He mentions various arguments which might be alleged to prove the contrary, but answers

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ii. pp. 72-74). . . . Princeps enim positus est ut faciat justitiam et judicium, id est justum judicium . . . et ideo quum terminos justitiæ egreditur, non dicitur rex . . . fol. 38, v. Unde et si constet quod vassalum velit rex contra justitiam capere et male tractare, dixerat enim ei hoc rex notificando suam voluntatem per ea quæ dicuntur in glo. . . . Juste timebit ire, timens capi, de facto et occidi . . . tunc non est inobediens regi, quia in tali actu non est rex. . . . Talis actus et tale delictum regium, omnem honorem excludit. Item et tunc dominus privatur proprietate vassali, sicut vassallus feudo quum non facit justitiam domino." Cf. Assizes of Jerusalem in vol. iii. p. 53.

[1] John of Paris: 'Tractatus de Potestate Regia et Papali,' 18: "Quod autem arguitur vigesimo, quod corporalia reguntur per spiritualia, et ab ipsis dependunt ut a causa. Responsio: argumentum, ut sit factum, multipliciter deficit. Primo, quia supponit, quod potestas regalis sit corporalis et non spiritualis, et habeat curam corporum et non animarum: quod falsum est, ut patet ex supra dictis, cum ordinetur ad bonum commune civium, non quodcunque, sed quod est vivere secundum virtutem. Unde dicit philosophus in Ethicis, quod intentio legislatoris est homines bonos facere, et inducere in virtutem."

them first by citing some words of the Apostolic writings bidding men to obey princes and kings for God's sake, and then by urging that the "order" of justice and of human affairs required that the inferior should obey the superior, and that the faith of Jesus Christ did not suspend the "order of justice" or the necessity of obedience. He adds, however, and it is very significant, that this obedience is only due so far as justice requires it, and that subjects are not bound to obey an unjust or usurped authority, or an authority which commands unjust things.[1]

In another place he discusses the nature of sedition, and the question whether it is a mortal sin. He concludes that it is so, and in this case the reason which he gives is not theological but philosophical. He quotes from St Augustine Cicero's well-known definition of the "populus," and says that it is therefore clear that sedition is opposed to justice and the common good, and is a grave mortal sin, for the common good is greater than the private good. Again, however, in the same "Article" he adds that a revolt against a tyrannical and unjust authority has not the nature of sedition, for such an authority is not directed to the common good, but only to the convenience of the ruler.[2]

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[1] St Thomas Aquinas, 'Summa Theologica,' 2. 2, 104, 6: "Sed contra est quod dicitur ad Tit. iii. 'Admone illos, principibus subditos esse,' et 1 Pet. ii. 'Subjecti estote omni humanæ creaturæ propter Deum, sive regi, quasi præcellenti sive ducibus, tamquam ab eo missis.'

Respondeo dicendum, quod fides Christi est justitiæ principium, et causa, secundum illud Rom. iii. 'Justitia Dei per fidem Jesu Christi,' et ideo per fidem Jesu Christi non tollitur ordo justitiæ, sed magis firmatur; ordo autem justitiæ requirit, ut inferiores suis superioribus obediant: aliter enim non posset humanarum rerum status conservari, et ideo per fidem Christi non excusantur fideles quin principibus secularibus obedire teneantur. . . . Ad tertium ergo dicendum, quod principibus secularibus intantum homo obedire tenetur, in quantum ordo justitiæ requirit; et ideo si non habeant justum principatum, sed usurpatum, vel si injusta precipiant, non tenentur eis subjecti obedire, nisi forte per accidens, propter vitandum scandalum, vel periculum."

[2] Id. id., 2. 2, 42, 2: "Respondeo dicendum, quod sicut dictum est, seditio opponitur unitati multitudinis, id est populi civitatis vel regni: dicit autem Aug. ii. De Civ. Dei, quod 'populum determinant sapientes, non omnem cœtum multitudinis, sed cœtum juris consensu, et utilitatis communione sociatum'; unde manifestum est, unitatem, cui opponitur seditio, esse unitatem juris et communis utili-

In a passage in his treatise, 'De Regimine Principum,' St Thomas goes even further, and while he maintains that human life has an end even beyond the life of virtue, that is the fruition of the divine; and while it is the function of the priest to teach men the way to his true felicity, it belongs to the king's duty to order human life in such a way that men may attain to this true felicity.[1] The true aim of the king should be so to order things that his subjects may live the good life, and the good life is the life according to virtue.[2]

It is important to observe that these principles of the legitimate nature and moral end of the State are not limited to Christian States, but were represented by the most authoritative writers of the thirteenth century as extending to all States, even those of the unbelievers. Innocent IV., in his 'Commentary on the Decretals,' sets out this principle with

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tatis; manifestum est ergo, quod seditio opponitur et justitiæ et communi bono; et ideo ex suo genere est peccatum mortale; et tanto gravius, quanto bonum commune, quod impugnatur per seditionem est majus, quam bonum privatum, quod impugnatur per rixam. . . . Ad tertium dicendum, quod regimen tyrannicum non est justum; quia non ordinatur ad bonum commune, sed ad bonum privatum regentis, ut patet per Phil. in 3 Polit. et in 8 Ethic.; et ideo perturbatio hujus regiminis non habet rationem seditionis."

[1] Id., 'De Regimine Principum,' i. 14: "Non est ergo ultimus finis multitudinis vivere secundum virtutem, sed per virtuosam vitam pervenire ad fruitionem divinam."

Id. id., i. 15: "Quia igitur vitæ, qua in presenti bene vivimus, finis est beatitudo cœlestis, ad regis officium pertinet ea ratione vitam multitudinis bonam procurare secundum quod congruit ad cœlestem beatitudinem consequendam, ut scilicet ea præcipiat, quæ ad cœlestem beatitudinem ducant, et eorum contraria secundum quod fuerit possibile inderdicat. Quæ autem sit ad veram beatitudinem via, et quæ siut impedimenta ejus, ex lege divina cognoscitur, cujus doctrina pertinet ad sacerdotum officium."

[2] Id. id. id.: "Per legem igitur divinam edoctus, ad hoc præcipuum studium debet intendere (Rex) qualiter multitudo sibi subdita bene vivat . . . Ad bonam autem unius hominis vitam duo requiruntur, unum principale, quod est operatio secundum virtutem; virtus enim est qua bene vivitur: aliud vero secundarium, et quasi instrumentale, scilicet, corporalium bonorum sufficientia, quorum usus est necessarius ad actum virtutis; ipsa tamen hominis unitas per naturam caussatur, multitudinis autem unitas, quæ pax dicitur, per regentis industriam est procuranda. Sic igitur ad bonam vitam multitudinis instituendam tria requiruntur. Prima quidem ut multitudo in unitate pacis constituatur. Secundo ut multitudo vinculo pacis dirigatur ad bene agendum. . . . Tertio vero requiritur ut per regentis industriam necessariorum ad bene vivendum adsit sufficiens copia."

great directness. Lordships, possessions, and jurisdictions are lawful and blameless among the unbelievers, for these were created not only for the faithful, but for all rational creatures, as it is said, God makes the sun to rise upon the evil and upon the good, and therefore neither the Pope nor other Christian men have any right to destroy the governments of the unbelievers.[1]

St Thomas Aquinas maintains the same doctrine, and even admits that an actually existing authority of unbelievers over Christian people is legitimate, though it may be abolished by the authority of the Church. Dominion and political superiority were created by human law, but the divine law, which is of grace, does not destroy the human law, which arises from natural reason, and therefore the distinction between believers and unbelievers does not of itself destroy the authority of unbelievers over the believer.[2]

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[1] Innocent IV.: 'Apparatus ad quinque libros Decretalium,' iii. 34, 8: "Jurisdictionem enim justam et rectam lego, ubi dicitur datus gladius ad vindictam, S̄. de maio. et obe. solite. ('Dec.,' i. 33, 6). Sed quando ceperit, nescio, nisi forte, quod Deus dedit aliquem vel aliquos qui facerent justitiam super delinquentes; vel jure naturæ paterfamilias super familiam suam habebat jurisdictionem omnem a principio, sed hodie non habet, nisi in paucis et modicis, ff. De fur. respiciendum. ('Digest,' 49, 19, 11). Et c. de pa. po. per totum ('Cod.,' viii. 47). Hoc autem certum est, quod ipse Deus per se a principio exercuit jurisdictionem, ut no. S. De foro comp. licet. ('Dec.,' ii. 2, 10). Item per electionem poterunt habere principes, sicut habuerunt Saul et multos alios. viii. Q. 1, licet. . . . Sic ergo audacter (Gratian, 'Decretum,' C. viii. 1, 15, 18) et in pluribus aliis c. predicta, inquam (?) Sic dominia, possessiones et jurisdictiones licite sine peccato possunt esse apud infideles. Hæc enim non tantum pro fidelibus sed pro omni rationabili creatura facta sunt, ut est predictum; 'Ipse enim solem suum oriri facit super bonos et malos'; 'Ipse etiam volatilia pascit,' Mattei c. v. circa fi. et. vi. Et propter hoc dicimus, non licet Papæ vel fidelibus auferre sua sive dominia, sive jurisdictiones infidelibus, quia sine peccato possident. Sed bene tamen credimus, quod Papa qui est vicarius Jesu Christi, potestatem habet non tam super Christianos, sed etiam super omnes infideles."

[2] St Thomas Aquinas, 'Summa Theologica,' 2. 2, 10, 10: "Respondeo dicendum, quod circa hoc dupliciter loqui possumus. Uno modo de dominio vel prelatione infidelium super fideles de novo instituenda; et hoc nullo modo permitti debet, cederet enim hoc in scandalum et in periculum fidei. . . . Alio modo possumus loqui de dominio, vel prelatione jam pre-existente: ubi considerandum est, quod dominium et prelatio introducta sunt ex jure humano: distinctio autem fidelium et infidelium est ex jure divino: jus autem divinum, quod est

It is therefore clear that in the judgment of all the writers on political theory in the thirteenth century there is no doubt whatever that the end and purpose of the State is a moral one—that is, the maintenance of justice, or, in the terms derived from Aristotle, the setting forward of the life according to virtue, and that the authority of the State is limited by its end—that is, by justice, and that it is derived from God Himself.

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ex gratia, non tollit jus humanum, quod est ex naturali ratione; ideo distinctio fidelium et infidelium secundum se considerata non tollit dominium et prelationem supra fideles. Potest tamen juste per sententiam vel ordinationem ecclesiæ auctoritatem Dei habentis tale jus dominii vel prelationis tolli; quia infideles merito suæ infidelitatis merentur potestatem amittere super fideles, qui transferuntur in filios Dei."

CHAPTER IV.

THE NATURE OF LAW.

We have in the last chapter endeavoured to set out our confident judgment that to the Middle Ages it was clear that the nature and purpose of the State was a moral one, that it came from God, and that its function was to maintain and set forward justice. This may at first sight seem a conception which, however important, is somewhat abstract, and therefore, in order to appreciate its full significance, we must go on to observe that both to the thinkers and to the practical men of the Middle Ages justice had a definite and concrete embodiment in the law.

We shall have occasion presently to consider the beginnings of the theory of what is called sovereignty, but it is impossible to understand the political ideas of the people of the Middle Ages at all, if we do not begin by understanding that to them there was only one supreme authority in the State, and that was not the ruler, whether king or emperor, but only the law. Behind the law of the State there was, indeed, a more august law still, the law of nature or of God, to which the law of the State was subordinate. But within the State, and subject always to this higher authority, the law was supreme.

We may, indeed, say that it was the characteristic defect of mediæval civilisation that it was, if anything, too legal; but as the men of that time saw it, it was the majestic fabric of the law which stood between them and anarchy, the anarchy of mere disorder, or the anarchy of a capricious tyranny. To them liberty, true liberty, was not something contrary to law, but rather was to be found in law itself. We have in previous volumes endeavoured to set out something of all this, and we have seen that in this matter there was no difference between the political writers of the ninth century and of the eleventh and twelfth, between Feudalists and Civilians ;[1] but we may here recall a few of their most significant sayings. Let the king, says Bracton, recognise in the law that same authority which the law gives to him, for there is no king where mere will rules and not the law. The Lord or the Lady is only Lord of law (or right), they have no authority to do wrong ; such is the doctrine of the Assizes of the kingdom of Jerusalem.[2] The Bologna Civilians are only expressing the same judgment in more general terms when Azo says of justice that it is the mind or will of God which is in all things right and just, and when the author of the 'Prague Fragment' says that the law flows from justice as a stream from its source.[3]

Before, however, we deal with the questions related to these principles, we must in this chapter consider the systematic treatment of the nature of law in its largest sense by St Thomas Aquinas, so far, that is, as it is related to our subject.

There are two very important sections of the 'Summa Theologica' in which he considers this : in the first he considers it in relation to reason, in the second he deals with it in relation to justice. He begins his discussion by considering the relation of law to reason, and maintains that the proper character of law is to command and to forbid; but to command belongs to reason, therefore law is a thing related to reason. It is reason which directs things to their end.[1]

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[1] Cf. vol. i. chaps. 18 and 19 ; vol. ii. part i. chap. 2 ; vol. iii. part i. chap. 2 ; vol. iii. part ii. chap. 5.

[2] Bracton, 'De Legibus,' i. 8, 5 : "Attribuat igitur rex legi, quod lex attribuit ei, videlicet, dominationem et potestatem, non est enim rex ubi dominatur voluntas, et non lex" (cf. vol. iii. p. 38).

Assizes of Jerusalem, 'Assises de la Cour des Bourgeois,' xxvi. : "Car la dame ne le sire n'en est seigneur se non dou dreit . . . mais bien sachiès qu'il n'est mie seigneur de faire tort" (cf. vol. iii. p. 33).

[3] Azo, 'Summa Institutionum,' i. 1 : "Quasi diceret, iustitia est Dei dispositio quæ in omnibus rebus recte consistit et juste disponit : ipse retribuit unicuique secundum opera sua, ipse non variabilis, ipse non est temporalis in dispensationibus vel voluntatibus suis : immo ejus voluntas est constans et perpetua : ipse enim non habuit principium nec habet vel habebit finem."

'Fragmentum Pragense,' iii. 9 : "Set quia in justitia jus initia habet, et ex ea quasi rivulus ex fonte manat, ideo eam anteponit."

Cf. vol. ii. p. 11, note 1, and p. 13, note 2.

Having thus set out the general nature of law, he goes on to discuss it under four terms—the eternal law, the natural law, the divine law, and human law. St Thomas deals first with the eternal law. It is manifest, he says, that the whole universe is governed by the divine reason, and therefore this "ratio gubernationis" has the character of law; the end of the divine government is God Himself, and His law is not other than Himself.[2]

The natural law is different from but related to this. All things which are subject to the divine providence are indeed controlled by the eternal law, but the rational creature is subject to the divine providence in a more excellent way, for it partakes in the work of providence, it "provides" for itself and others, and this participation of the rational creature in the eternal law is called natural law. The light of natural reason, by which we discern what is good and what is evil, belongs to the natural law; it is nothing else than the impression of the divine light in us. The natural law is, therefore, the participation of the rational creature in the eternal law.[1] St Thomas was indeed aware of the fact that the term natural law had been and might be used in more than one sense,[2] but his own conception is perfectly clear.

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[1] St Thomas Aquinas, 'Summa Theologica,' i. 2, 90, 1: "Sed contra est quod ad legem pertinet præcipere et prohibere: sed imperare est rationis, ut supra habitum est (Q. xvii. 1) ergo lex est aliquid rationis. . . . Regula autem et mensura humanorum actuum est ratio, quæ est principium primum actuum humanorum, ut ex prædictis patet (Q. 66, 1). Rationis enim est ordinare ad finem, qui est primum principium in agendis, secundum philosoph. ('Lib.,' vii., 'Ethic.,' c. 8). In unoquoque autem genere in quod est principium, est mensura, et regula illius generis: sicut unitas in genere numeri est motus primus in genere motuum. Inde relinquitur quod lex sit aliquid pertinens ad rationem."

[2] Id. id., 1. 2, 91, 1: "Respondeo dicendum, quod sicut supra dictum est (*i.e.*, Q. 90) nihil est aliud lex, quam dictamen practicæ rationis in principe, qui gubernat aliquam communitatem perfectam. Manifestum est autem, supposito quod mundus divina providentia regatur, ut in I. habitum est (i. 22, 1 and 2) quod tota communitas universi gubernatur ratione divina; et ideo ipsa ratio gubernationis rerum in Deo, sicut in principe universitatis existens, legis habet rationem; et quia divina ratio nihil concipit ex tempore, sed habet æternum conceptum, ut dicitur Prov. viii., inde est, quod hujusmodi legem oportet dicere æternam. . . . Ad tertium dicendum, quod lex importat ordinem ad finem active . . . sed finis divinæ gubernationis est ipse Deus; nec ejus lex est aliud ab ipso, inde lex æterna non ordinatur in alium finem."

In order, however, to understand the full significance of this conception, we must observe another distinction of great importance, which St Thomas makes in another place—that is, the distinction between natural law and positive law, a distinction which applies both to human and divine law. Men can, by a common agreement, establish a law as just, in matters otherwise indifferent, so long as it is not contrary to natural justice, and this is positive law; and there is a positive divine law as well as a natural.[1]

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[1] Id. id., 1. 2, 91, 2: "Inde cum omnia, quæ divinæ providentiæ subduntur, a lege eterna regulentur et mensurentur, ut ex dictis patet, manifestum est, quod omnia participant aliqualiter legem eternam; in quantum scilicet, ex impressione ejus habent inclinationes in proprios actus et fines. Inter cætera autem, rationalis creatura eccellentiore quodam modo divinæ providentiæ subjacet, in quantum et ipsa fit providentiæ particips, sibi ipsi et aliis providens: unde et in ipsa participatur ratio eterna per quam habet naturalem inclinationem ad debitum actum et finem: et talis participatio legis æternæ in rationali creatura lex naturalis dicitur: unde quum psalmista dixisset (Ps. iv.). 'Sacrificate sacrificium justitiæ,' quasi quibusdam quærentibus, quæ sunt justitiæ opera subjungit: 'Multi dicunt: quis ostendit nobis bona?' Cui questioni respondens, dicit, 'Signatum est super nos lumen vultus tui, Domine.' Quasi lumen rationis naturalis, quo discernimus quid sit bonum, et quid malum, quod pertinet ad naturalem legem, nihil aliud sit quam impressio divini luminis in nobis: unde patet, quod lex naturalis nihil aliud est, quam participatio legis eternæ in rationali creatura."

Cf. the treatment of Natural Law by the Canonists, vol. ii. part ii. chap. iii.

[2] Id. id., 1. 2, 94, 2: "Inest, enim, primo inclinatio homini ad bonum secundum naturam, in qua communicat omnibus substantiis; prout scilicet, qælibet substantia appetit conservationem sui esse secundum suam naturam, et secundum hanc inclinationem, pertinent ad legem naturalem ea, per quæ vita hominis conservatur, et contrarium impeditur. Secundo, inest homini inclinatio ad aliqua magis specialia secundum naturam, in qua communicat cum ceteris animalibus: et secundum hoc dicuntur ea esse de legi naturali, quæ natura omnia animalia docuit; ut est commixtio maris et fœminæ, educatio et liberorum et similia. Tertio modo inest homini inclinatio ad bonum secundum naturam rationis, quæ est sibi propria: sicut homo habet naturalem inclinationem ad hoc quod veritatem cognoscat de Deo, et ad hoc quod in societate vivat: et secundum hoc ad legem naturalem pertinent ea, quæ ad hujusmodi inclinationem spectant; ut pote quod homo ignorantiam vitet; quod alios non offendat, cum quibus debet conversari; et cetera hujusmodi, quæ ad hoc spectant."

The term Divine law is used by St Thomas to describe that twofold law of God which is revealed in the Old and New Testaments. It was needed for various reasons, because the final end of man is beyond human reason, because of the uncertainty of men's judgments, because human law can only deal with the external actions of men, because human law cannot prohibit or punish all evil actions, lest it should do more harm than good. The divine law does not indeed contradict or annul the natural law, but it was added that men might participate in the "eternal law" in a higher manner.[2]

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[1] Id. id., 2. 2, 57, 2: "Ad secundum dicendum quod voluntas humana ex communi condicto potest aliquid facere justum in his, quæ secundum se non habent aliquam repugnantiam ad naturalem justitiam: et in his habet locum jus positivum: unde Philos dicit in v. Ethic (cap. 7) quod 'legale justum est, quod ex principio nihil differt sic vel aliter; quando autem ponitur differt.' Sed si aliquid de se repugnantiam habeat ad jus naturale, non potest voluntate humana fieri justum; puta si statuatur, quod liceat furari, vel adulterium committere; unde dicitur Isa. 10. 'Væ qui condunt leges iniquas.'

Ad tertium dicendum, quod jus divinum dicitur, quod divinitus promulgatur: et hoc quidem partim est de his, quæ sunt naturaliter justa, sed tamen eorum justitia homines latet; partim autem de his quæ fiunt justa institutione divina; unde etiam jus divinum per haec duo distingui potest, sicut et jus humanum: sunt enim in lege divina quædam præcepta quia bona; et prohibita quia mala: quædam vero bona quia præcepta, et mala quia prohibita."

[2] Id. id., 1. 2, 91, 4: "Respondeo dicendum, quod præter legem naturalem, et legem humanam, necessarium fuit ad directionem humanæ vitæ habere legem divinam. Et hoc propter quatuor rationes. Primo quidem, quia per legem dirigitur homo ad actus proprios in ordine ad ultimum finem: . . . sed quia homo ordinatur ad finem beatitudinis æternæ, quæ excedit proportionem naturalis facultatis humanæ . . . ideo necessarium fuit, ut supra legem naturalem et humanam, dirigeretur etiam ad sum finem lege divinitus data. Secundo, quia propter incertitudinem humani iudicii . . . contingit de actibus humanis diversorum esse diversa iudicia ex quibus etiam diversæ et contrariæ leges procedunt . . . necessarium fuit, ut in actibus propriis dirigeretur per legem divinitus datam, de qua constat, quod non potest errare. Tertio, quia de his potest homo legem facere, de quibus potest iudicare, iudicium autem hominis esse non potest de interioribus actibus, qui latent . . . necessarium fuit, quod ad hoc superveniret lex divina. Quarto, quia . . . lex humana non potest omnia quæ male fiunt, punire, vel prohibere: quia dum auferre vellet omnia mala, sequeretur quod etiem multa bona tollerentur, et impediretur utilitas boni communis

Human law is described by St Thomas in another article of the same question under the terms of its relation to reason. Law is a command of the practical reason, for the human reason must draw out and apply to particular circumstances the general precepts of the natural law.[1] St Thomas, however, also points out that this general conception of the nature of human law requires a further analysis. The term human law includes two different kinds of law, the "ius gentium" and the "ius civile." The first is derived from the natural law, as conclusions are derived from premisses, and forms that body of laws without which men could not live together. The second is derived from the natural law, "per modum particularis determinationis," and is that which any State establishes as being suitable to its own conditions.[2]

Law, then, in all its forms is the expression of reason, but it is also, in the judgment of St Thomas, the expression of justice, and we must briefly consider this. He accepts the definition of justice, given by Ulpian in the 'Digest,' "Justitia est constans et perpetua voluntas jus suum cuique tribuendi"

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quod est necessarium ad conservationem humanam; ut ergo nullum malum improhibitum, et impunitum remaneat, necessarium fuit supervenire legem divinam, per quæ omnia peccata prohibentur. . . . . . .
Ad prinum ergo dicendum, quod per naturalem legem participatur lex æterna secundem proportionem capacitatis humanæ naturæ: sed oportet, ut altiori modo dirigatur homo in ultimum finem supernaturalem; et ideo superadditur lex divinitus data, per quam lex æterna participatur altiori modo."

[1] Id. id., 1. 2, 91, 3: "Respondeo dicendum, quod, sicut supra dictum est lex est quoddam dictamen practicæ rationis . . . ita etiam ex præceptis legis naturalibus, quasi ex quibusdam principiis communibus, et indemonstrabilibus, necesse est quod ratio humana procedat ad aliqua magis particulariter disponenda: et istae particulares dispositiones adinventæ secundum rationem humanam dicuntur leges humanæ."

[2] Id. id., 1. 2, 95, 4: "Est enim primo de ratione legis humanæ, quod sit derivata a lege naturæ, ut ex dictis patet (Art. ii., hujus Q.); et secundum hoc dividitur jus positivum, in jus gentium et jus civile, secundum duos modos, quibus aliquid derivatur a lege naturæ, ut supra dictum est: nam ad jus gentium pertinent ea quæ derivantur ex lege naturæ, sicut conclusiones ex principiis: ut justæ emptiones, veuditiones et alia hujusmodi, sine quibus homines ad invicem convivere non possent: quod est de lege naturæ: quia homo est naturaliter animae sociabile, ut probatur in I. Polit. (c. 2): quæ vero derivantur a lege naturæ per modum particularis determinationis, pertinent ad jus civile, secundum quod quælibet civitas aliquid sibi accommode determinat."

('Dig.,' i. 10) if it is properly understood.[1] In a later "Quaestio" indeed, he discusses the various parts or aspects of justice, and accepts the Aristotelian distinction between "distributive" and "commutative" justice.[2] It does not, however, appear that in St Thomas' judgment this interferes with the general truth of Ulpian's definition.

The whole system of law, and here St Thomas uses the word "jus," is so called, according to St Isidore, because it is just (justum), and the just and "jus" are the "objectum" of justice,[3] and St Thomas gives his considered and emphatic assent.[4]

He therefore goes on to describe "judicium," which is the action of the judge, as being the definition or determination of that which is just or lawful, and this belongs to justice; this is what Aristotle meant when he said that men go to the judge as to a living justice.[5] Perhaps the most emphatic assertion by St Thomas of the relation between law and justice may be found in another "Article" of the same "Question," where he asks whether the judgment of the judge must always be in accordance with the law. He decides that while normally this must be so, this will only hold if the law is just. Laws which are contrary to the natural law are unjust, and have no force. It may even happen that laws which are in themselves right may not be adequate to certain cases, and would, in such cases, be contrary to the natural law. In such circumstances men must not judge according to the letter of the law, but must recur to that equity which the legislator desired to attain.[1]

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[1] Id. id., 2. 2, 58, 1: "Ad Primum sic proceditur. Videtur quod inconvenienter definiatur a jurisperitis, quod justitia est 'perpetua et constans voluntas jus suum unicuique tribuendi' . . . Respondeo dicendum, quod predicta justitiæ definitio conveniens est, si recte intelligatur . . . et si quis vellet eam in debitam formam definitionis reducere, posset sic dicere, quod justitia est habitus, secundum quem aliquis constanti et perpetua voluntate jus suum unicuique tribuit; et quasi est eadem definitio cum ea, quam Philos ponit in v. Ethic (cap. v.) dicens, 'Quod justia est habitus, secundum quem aliquis dicitur operativus, secundum electionem justi.'"

[2] Id. id., 2. 2, 61, 1: "Sed contra est quod Philos in v. Ethic (c. 2) ponit duas partes justitiæ, et dicit, quod una est directiva in distributionibus, alia in commutationibus.

Respondeo dicendum, quod sicut dictum est, justitia particularis ordinatur ad aliquam privatam personam: quæ comparatur ad communitatem, sicut pars ad totum: potest autem ad aliquam partem duplex ordo attendi: unus quidem partis ad partem; qui similis est ordo unius privatæ personæ ad aliam; et hunc ordinem dirigit commutativa justitia, quæ consistit in his quæ mutuo fiunt inter duas personas ad invicem; alius ordo attenditur totius ad partes: et huic ordini assimilatur ejus quod est commune ad singulas personas: quem quidem ordinem dirigit justitia distributiva, quæ est distributiva communium secundum proportionalitatem: et ideo duæ sunt justitiæ species: scilicet: distributiva, et commutativa."

[3] Id. id., 2. 2, 57, 1: "Sed contra est quod Isid.: dicit in eodem libro ('Etym.,' v. 3), quod jus dictum est quia est justum: sed justum est objectum justitiæ: dicit enim Philos in v. Ethic (cap. i.) quod 'omnes talem habitum volunt dicere justum a quo operativi justorum sunt'; ergo jus est objectum justitiæ."

[4] Id. id. id., Resp.

[5] Id. id., 2. 2, 60, 1: "Respondeo dicendum quod judicium proprie nominat actum judicis, in quantum judex

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est: judex autem dicitur, quasi jus dicens: jus autem est objectum justitiæ, ut supra habitum est: et ideo judicium importat, secundum primam nominis impositionem, definitionem vel determinationem justi, sive juris: quod autem aliquis bene definiat aliquid in operibus virtuosis, proprie procedit ex habitu virtutis: sicut castus recte determinat ea, quæ pertinent ad cartitatem; et ideo judicium, quod importat rectam determinationem ejus, quod est justum, proprie pertinet ad justitiam: propter quod Philos, in v. Ethic (cap. 4) dicit, quod homines ad judicem confugiunt, sicut ad quandam justitiam animatam."

[1] Id. id., 2. 2, 60, 5: "Respondeo dicendum, quod sicut dictum est, judicium nihil aliud est quam quædam definitio, vel determinatio ejus quod justum est: fit autem aliquid justum dupliciter, uno modo ex ipsa natura rei quod dicitur jus naturale: alio modo ex quodam condicto inter homines; quod dicitur jus positivum ut supra habitum est (Q. 57, 2): leges autem scribuntur ad utriusque juris declarationem: aliter tamen, et aliter: nam legis scriptura jus quidem naturale continet, sed non instituit: non enim habet robur ex lege, sed ex natura: jus autem positivum scriptura legis et continet, et instituit, dans ei auctoritatis robur; et ideo necesse est, quod judicium fiat secundum legis scripturam, alioquim judicium deficeret vel a justo naturali vel a justo positivo.

Ad primum ergo dicendum, quod lex scripta sicut non dat robur juri naturali, ita nec potest ejus robur minuere, vel auferre: quia nec voluntas hominis potest immutare naturam: et ideo si scriptura legis contineat aliquid contra jus naturale, injusta est, nec habet vim obligandi; ibi enim jus positivum locum habet, ubi quantum ad jus naturale nihil differt, utrum sic vel aliter fiat, sicut supra habitum est (Q. 57, 2); et ideo nec tales scripturæ leges dicuntur, sed potius legis corruptiones, ut supra dictum est (1. 2, 95, 2): et ideo secundum eas non est judicandum.

Ad secundum dicendum, quod sicut leges iniquæ secundum se contrariantur juri naturali; vel semper, vel ut in pluribus; ita etiam leges, quæ sunt recte positæ, in aliquibus casibus deficiunt; in quibus si servarentur, essent contra jus naturale: et ideo in talibus non est secundum literam legis judicandum, sed recurrendum ad æquitatem, quam intendit legislator: unde jurisp: dicit ('Dig.,' i. 3, 25) 'Nulla ratio juris, aut æquitatis benignitas patitur, ut quæ salubriter pro utilitate hominum introducuntur,

St Thomas' conception of the nature of law is, then, founded upon two principles, that it is the expression of reason, and that its purpose is justice. It is interesting to compare his conception with that of the mediæval Jurists, with which we have dealt especially in the second and third volumes of this work.[1] His treatment represents a very important development of the significance of the rational element in law, while it also brings out very emphatically the fundamental mediæval conception of its moral or ethical nature.

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ea nos duriore interpretatione contra ipsorum commodum producamus ad severitatem': et in talibus etiam legislator aliter judicaret; et si considerasset, lege determinasset." Cf. id. id., 1. 2, 95, 2, Resp.

[1] Cf. vol. ii. part i. chaps. 1 and 2; part ii. chap. 3; vol. iii. part i. chap. 2; part ii. chap, 5.

CHAPTER V.

THE SOURCE OF THE LAW OF THE STATE—I.

We have so far considered the mediæval conceptions of the nature of law as representing the principles of reason and justice, or, to put it into the other terms of that time, human law as limited and controlled by the law of nature. We must now consider the more immediate source of the law of the State, the authority from which it proceeded, and upon which it rested. In this chapter and the following, we shall endeavour to set out what we venture to think were the normal mediæval conceptions upon the subject, and to trace the beginnings of another mode of thought.

We have in previous volumes set out what appears to us the first and in some sense the most fundamental aspect of the mediæval conception of the nature and source of the law of the State—that is, that it was custom. We have seen that this was the conception of the feudal jurists,[1] and that this was also the first principle of the Canon Law.[2] We shall have presently to deal with the question of the relation of the Civilians of Bologna and the revived study of the Roman law to the question of the source of law; but for the moment it is enough to observe that the Civilians also were clear that custom had once been its source.[3] The principle is admirably expressed by Beaumanoir for France, when he says that all pleas are determined by custom, and by Bracton for England, when he asserts that England is governed by unwritten law and custom. It is no doubt true that Bracton thought that this was peculiar to England—a curiously inaccurate judgment, probably due to an impression that the other European countries lived under Roman law.[1] What is thus affirmed for their own countries by Beaumanoir and Bracton became a sweeping and all-including generalisation in Gratian, when he opened his 'Decretum' with the famous words, founded upon Isidore of Seville, "The race of mankind is ruled by two things, by natural law and by custom."[2]

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[1] Cf. vol. iii. part i. chap. 3.

[2] Cf. vol. ii. part ii. chap. 8.

[3] Vol. ii. part i. chaps. 6 and 7.

We venture to urge that it is quite impossible to understand the political structure of mediæval society and the nature of mediæval government unless we begin by taking account of this conception. We are so much and so naturally, if not very intelligently, influenced by the belief in the existence of a conscious sovereign authority, of which law is the expression, that we find it difficult to understand the state of mind of those ages when the conception of the sovereign, in the modern sense of the word, hardly existed.

The first question to which we must here address ourselves is how far this conception of law, as proceeding from or controlled by custom, was maintained in the thirteenth century by writers with whom we have not yet dealt, or in countries whose laws we have not yet examined.

And first, we may observe the careful and yet confident mode in which St Thomas Aquinas sets out the principle of the authority of custom. In a discussion of the question whether law can be changed, he considers the question whether custom has the force of law. He cites various objections which could be alleged, and then states his own conclusion. He first cites the famous words of St Augustine that the custom of the people of God and the institutions of men's ancestors are to be accepted as law, and then proceeds to say that law is the expression of the reason and will of the legislator, but these are declared as plainly by men's actions as by their words, and therefore the frequently repeated actions of men which constitute custom can change or establish or interpret law.[1]

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[1] Cf. vol. iii. pp. 41, 42.

[2] Cf. vol. ii. p. 98.

He goes on to contend that, as human laws may not cover all cases, it may be right sometimes to take action which is outside of the law, and when such cases are multiplied owing to some change in men, custom shows that the law is no longer useful. And he even adds that, while normally, if the conditions remain the same, the law founded upon these conditions will prevail over custom, there may be cases where the law is useless, simply because it is contrary to the custom of the country, for this is one of the conditions of law—it is difficult to change the custom of the multitude.[2]

It is clear that while St Thomas recognises other forms of law besides the custom of the people, he does substantially represent the conception of custom as a main source of law. It is, however, clear that St Thomas Aquinas implies that there were other forms of law besides custom, and we shall presently deal with these. The important point of the passages which we have just considered is that, whatever other forms of law there might be, he was clear that custom lay behind them, and was still paramount over them.

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[1] St Thomas Aquinas, 'Summa Theologica,' 1. 2, 97, 3: "Sed contra est quod Augustinus dicit in Epistola ad Casulanum: 'mos populi Dei et instituta majorum pro lege sunt tenenda; et sicut prevaricatores legum divinarum, ita et contemptores consuetudinum ecclesiasticarum coercendi sunt.' Respondeo dicendum, quod omnis lex proficiscitur a ratione, et voluntate legislatoris: lex quidem divina, et naturalis, a rationabili Dei voluntate, lex autem humana a voluntate hominis ratione regulata: sicut autem ratio et voluntas hominis manifestantur verbo in rebus agendis, ita etiam manifestantur facto: hoc enim unusquisque eligere videtur ut bonum, quod opere implet. Manifesta est autem, quod verbo humano potest et mutari lex, et etiam exponi, inquantum manifestat interiorem motum, et conceptum rationis humanæ; unde etiam et per actus maxime multiplicatos, qui consuetudinem efficiunt, mutari potest lex, et exponi et etiam, aliquid causari, quod legis virtutem obtineat; inquantum scilicet per exteriores actus multiplicatas interior voluntatis motus, et rationis conceptus efficacissime declaratur: quum enim aliquid multoties fit, videtur ex deliberato rationis judicio proveniri: et secundum hoc consuetudo et habet vim legis, et legem abolet, et est legum interpretatrix."

Cf. Julianus in 'Dig.,' i. 3, 32, and vol. i. p. 64.

[2] Id. id. id.: "Ad secundum dicendum, quod, sicut supra dictum est, leges humanæ in aliquibus casibus deficiunt; unde possibile est quandoque præter legem agere, in casu scilicet in quo deficit lex; et tamen actus non erit malus: et cum tales casus multiplicantur propter aliquam mutationem hominum, tunc manifestatur per consuetudinem, quod lex ulterius non est utilis; sicut etiam manifestaretur, si lex contraria verbo promulgaretur. Si autem adhuc maneat ratio eadem, propter quam prima lex utilis erat, non consuetudo legem sed lex consuetudinem vincit: nisi forte propter hoc solum inutilis lex videatur, quoniam non est possibilis secundum consuetudinem patriæ, quæ erat una de conditionibus legis: difficile enim est consuetudinem multitudinis removere."

This is also the position of some other very important writers of the later thirteenth century. Vincent of Beauvais, in his 'Speculum,' cites the significant words of Gratian, in which he laid down the principle that even when laws were instituted by a competent authority, they needed to be confirmed by the custom of those who were concerned.[1] Albert the Great seems also to refer to the same doctrine when he says that the edict of the Prince which is maintained by custom has the force of written law.[2] What is, however, much more significant is the treatment of the authority of custom by the most important Canonist, and the most authoritative Civilian of the second half of the century.

Hostiensis, in his 'Commentary on the Decretals,' describes the nature and the authority of custom, and clearly accepts the judgment of Gregory IX. that custom if it is "rationabilis et legitime præscripta," prevails over other forms of positive law.[3] Odofridus, in his 'Commentary on the Digest,' draws attention to the divergence between this judgment of Gregory and the passage in the 'Code' (viii. 52 (53)), in which Constantine had apparently maintained that custom could not over-ride law.[1] Odofridus says that there had been much controversy over this question, and cites the opinion of Placentinus that, while in earlier times the Roman people could make law and its custom could abrogate it, nowadays it was only the Emperor who could make law, and therefore the custom of the people could no longer annul it. Odofridus himself, however, emphatically repudiated the opinion of Placentinus, and maintained that the Roman people could still make law, and that, therefore, its custom could still annul it.[2] Odofridus was, as it is thought, a pupil of Azo, and represented the tradition of his master.[3]

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[1] Vincent of Beauvais, 'Speculum,' ii. 7. 35. Cf. vol. ii. pp. 155, 166, 186.

[2] Albert the Great, 'Ethica,' x. iii. 2: "Sin autem illæ (leges) scriptæ sint vel non scriptæ, nihil videtur differre ad præsens: edictum enim principis consuetudine servatum scriptæ legis habet vigorem."

[3] Hostiensis, 'In Primum Librum Decretalium Commentaria,' i. 'De Consuetudine,' 8, 9: "Ad quod sciendum quod quatuor sunt species consuetudinis, scilicet generalissima, ut est consuetudo inter omnes Catholicos, versus orientem orare. . . ."

Id. id., 10: "Item est consuetudo generalis, quando scilicet nedum civitas sed tota provincia ita generaliter servat."

Id. id., 8, 11: "Et hae duo species derogant juri, sive in provincia, sive in loco in quo obtinet hoc, si post legem introducta sit consuetudo."

Id. id., 10, 9: "Quid est consuetudo. . . . Usus rationabilis competente tempore confirmatus. . . ."

Id. id., 11: "Utrum autem sit rationabilis vel non, relinquo judici, cum non regula posset tradi."

Cf. 'Decretals,' i. 4, 11. Cf. vol. ii. p. 158.

The opinions of these writers are interesting and important, but, after all, they are of little importance as compared with the clear and dogmatic statements of the great feudal lawyers like Bracton and Beaumanoir on the principles of the system of law which they had to interpret and administer in the latter part of the thirteenth century. We may add that the same judgment as to the legal authority of custom is clearly laid down in the great law book of Castile, which we know as the 'Siete Partidas' of Alfonso X. There are, it says, only three things which can hinder the force of law: the first is "uso," the second is "costumbre," and the third is "fuero."[1] We shall, however, presently return to the conception of law in Spain, and treat it in detail.

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[1] Cf. vol. ii. p. 158.

[2] Odofridus, 'Commentary on Digest,' i. 3, 32 (fol. 15 r.): "Dixit Pla. (Placentinus) Olim consuetudo vincebat legem, et ita loquitur lex nostra in fi . . . nam olim populus Romanus poterat legem condere, v̄n lex est quod populus Romanus, etc. . . . Non est ergo mirum si contraria ejus consuetudo tollat legem, quia ejus est tollere cujus est condere. . . . Sed hodie solus princeps potest legem condere, ut C. de le. et consti. l. f. (Code i. 14, 12) unde non debet consuetudo populi posse leges imperatoris tollere, et sic loquitur l. nostra quia hoc esset inconveniens quod consuetudo populi tolleret legem principis. Sed, signori, hanc solutionem non approbamus, quia sicut olim populus poterat legem condere, sic et hodie potest, v̄n debet posse consuetudo populi legem tollere, nec obstat quod dicitur quod solus princeps sive imperator potest legem condere, quia illa dictio, solus, excludit singularem personam, non populum, nam populus bene potest hodie legem condere, sicut olim poterat, ut ibi dixi. S. E. Ti. L. I. (*i.e.*, his 'Commentary on Digest,' i. iii. 1). Item non obstat quod alibi dicitur quod populus omne imperium legis condere transtulit in principem, ut id. f. p. p. l. una, in. pn. ('Digest,' i. 4, 11), quia intelligo 'transtulit,' i. concessit, non tamen de se abdicando ut ī. de consti. principum, l. 1 ('Digest,' 1, 4, 1). . . . Sed, signori, spretis omnibus aliis solutionibus dicendum est, ut dixi in casu; duplex est consuetudo, ut consuetudo generalis que obtinet per totum imperium Romanum, et illa generalis consuetudo l. contraria, ubique vincit legem, ut in ll. contrariis; est consuetudo specialis alicujus civitatis, et illa specialis consuetudo in illo solummodo loco vincit legem, in alio non . . . et sic intelligitur lex nostra."

[3] Cf. for a full discussion of the various opinions of the Civilians, vol. ii. pp. 59-67.

Enough, we think, has been said to make it clear that the first and, as we think, the fundamental principle of the Middle Ages was that the law was the expression, not so much of the deliberate and conscious will of any person or persons who possessed legislative authority, but rather of the habits and usages of the community. It is not our part here to endeavour to trace the whole significance of this conception, but we may be allowed to point out that this does not mean that law as custom was something unintelligible or irrational. It does not require any great consideration to enable us to understand that the custom of a community was determined by the conditions or environment under which it lived, and by the moral ideas such as they were, and however they arose, which possessed the community. We may be allowed to point out that this is true not only of the customary law of a primitive community, but in the long run of all systems of law.

It is also important to remember that this customary law was not really unchangeable and fixed. On the contrary, it is evident that at least in what we call progressive countries it was continually changing with the change of circumstances or ideas. It is probably, on the other hand, reasonable to think that this unconscious movement was not always sufficient to accommodate itself to such a development of civilisation as took place in the centuries from the eleventh to the thirteenth.

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[1] 'Siete Partidas,' i. 2, Introduction: "Embargar non puede ninguna cosa las leyes que non hayan la fuerza et el poder que habemos dicho sinon tres cosas: la primera uso, et la segunda costumbre, et la tercera fuero: et estas naxen unas do otras, et han derecho natural en si, segunt que en esto libro se muestra."

However this may be, it is clear that in the twelfth and thirteenth centuries we can trace the appearance and development of another method of conceiving of the source of law—that is, the beginning of the conception that law is the expression of the will of some conscious legislative authority. We have arrived, that is, at the beginnings, for the modern world, of the conception of sovereignty—that is, that there exists in every independent society some power of making and unmaking laws.

We have, a few pages back, referred to the statement of Bracton that England was governed by custom and not by written law; but the same passage which contains these words contains also words which express a different conception of the nature of the authority on which law is founded. Other countries, he says, are governed by written laws, England by unwritten law and custom; but these English laws may properly be called "leges," for that has the force of law which has been justly determined and approved with the counsel and consent of the great men, the approval of the whole commonwealth, and the authority of the King.[1] Such laws, he adds in another place, when they have been approved by the consent of those who are concerned (utantium) and have been confirmed by the oath of the King, cannot be changed or annulled without the counsel and consent of those by whose counsel or consent they were promulgated.[2]

Here we have a clear statement of the conception that there is a definite legislative authority which enacts and promulgates laws. What was, then, the nature of this authority? We have in the third volume set out our conclusion that the feudal and national jurists of the twelfth and thirteenth centuries clearly held that the legislative authority resided not in any one person, but belonged to the whole community, acting through all its parts, the King, the great men, and the whole body of the people;[1] and in the first volume we have endeavoured to show that this principle was already firmly established in the ninth century.[2]

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[1] Bracton, 'De Legibus,' i. 1, 2: "Cum autem fere in omnibus regionibus utatur legibus et jure non scripto, sola Anglia usa est in suis finibus jure non scripto et consuetudine. In ea quidem ex non scripto jus venit, quod usus comprobavit. Sed absurdum non erit leges Anglicanas, licet non scriptas, leges appellare, cum legis vigorem habeat, quicquid de consilio et consensu magnatum et reipublicæ communi sponsione, authoritate regis, sive principis precedente, juste fuerit definitum et approbatum."

[2] Id. id., i. 2, 6: "Hujusmodi vero leges Anglicanæ et consuetudines, regum auctoritate jubent quandoque, quandoque vetant, et quandoque judicant, et puniunt transgressores; quæ quidem, cum fuerint approbatæ consensu utentium, et sacramento regum confirmatæ, mutari non poterunt, nec destrui sine communi consensu eorum omnium, quorum consilio et consensu fuerunt promulgatæ. In melius tamen converti possunt, etiam sine eorum consensu, quia non destruitur quod in melius convertatur."

The words of Bracton which we have just quoted are only one expression of a general principle. Lest, however, it should be thought that this was only an abstract or speculative principle of the jurists, we will briefly examine the legislative forms of the twelfth and thirteenth centuries in the various European countries, and we shall see that nowhere in the constitutional methods of the great European countries is there any sign that the legislative power belonged to the king alone, but always that the king acted with the advice and consent of the great men, and behind them we see from time to time the whole community. We must bear in mind that it is impossible in the Middle Ages to draw a sharp line between what we should call legislative and administrative action.

If we go through the constitutions of the Empire, we shall find that they are issued not by the emperors alone, but with the advice and consent of the princes. This is obvious even of the great Frederick II. He renewed in 1213 the promises made by Otho IV. to Innocent III. with respect to the territories claimed by the Papacy, and did this with the counsel and consent of the princes of the Empire.[3] It is with the same counsel that in 1226 he annulled the communal privileges of the citizens of Cambrai.[4] He proclaimed the ban against various Lombard towns in the same year with the deliberation and judgment of the princes and other chief men of the Roman Empire.[5]

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[1] Cf. vol. iii. part i. chap. 3.

[2] Cf. vol. i. chap. 19.

[3] M. G. H., 'Const.,' vol. ii. 48.

[4] Id. id., 106.

[5] Id. id., 107.

The most noticeable phrase is, however, that which is prefixed to the constitution of 1235, which created an important new official, the "Justitiarius," who was to act in judicial matters during the absence of the emperor. Frederick begins by saying that ancient custom and unwritten law had not provided for some important matters which concerned the tranquillity of the empire, and therefore it was that with the counsel and assent of the princes and other faithful men of the empire assembled in a solemn council (curia) held at Maintz he had promulgated certain constitutions.[1]

It would seem that there is implied a contrast between the tradition and the custom of the empire, and the new constitution, which is issued by the emperor not alone, but with the authority of the Council of the Empire.

If we turn from the Empire to the kingdom of France, we find that the same principle is illustrated in the "Ordonnances" of the twelfth and thirteenth centuries. It is important to observe this, because there has been a tendency in some works on French history to speak of the mediæval French king as exercising some isolated legislative authority. This view is not consistent with the fact that the formulas of legislation which we find in the ordinances are of almost exactly the same nature as those which we find in the other European countries at that time, and which, as we have shown in our first volume, were already used in the ninth century.[2]

Louis the Fat in 1118 issued a regulation about the privileges of the serfs of St Maur des Fossés with the common counsel and assent of the bishops and great men.[1] Philip Augustus in 1209 issued an ordinance concerning feudal tenures, but the formula of legislation is one which hardly distinguishes between the royal authority and that of the great princes and barons.[2] In one ordinance of St Louis of 1246 we have a careful statement of procedure. He first called together at Orleans the barons and magnates of that province, and learned from them the custom of the province, and then, with their counsel and assent, commanded it to be firmly observed in the future.[3]

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[1] M. G. H., 'Const.,' vol. ii. 196: "Licet per totam Germaniam constituti vivant in causis et negociis privatorum consuetudinibus antiquitus traditis et jure non scripto, quia tamen ardua quædam, quæ generalem statum et tranquillitatem imperii reformabant nondum fuerant specialiter introducta, quorum partem aliquam, si quando casus trahebat in causam, ficta magis opinio quam statuti juris aut optente contradictorio judicio consuetudinis sentencia terminabat—De consilio et assensu dilectorum principum ecclesiasticorum et secularium in sollempni curia celebrata Moguncie constituciones quasdam certis capitulis comprehensas, presentibus eisdem principibus, nobilibus plurimis, et aliis fidelibus imperii fecimus promulgari."

[2] Vol. i. chap. 19.

It is true that in the reign of Philip III. we find in a number of cases, in place of the formula of the counsel and assent of the barons, the phrase "in Parliamento" or "in pleno Parliamento,"[4] while in other cases we find such phrases as "ordinatum fuit per Dominum regem et ejus consilium."[5] In the reign of Philip IV. we find an ordinance issued "par la cour de nostre seigneur le Rey,"[6] and another "in Parliamento."[7] In the first case these formulas are apparently taken to be equivalent.[8]

In other cases, however, in the reign of Philip IV., we have the traditional form, including the reference to the barons and the prelates. This is especially noticeable in the demand for the surrender of at least half of the silver plate belonging to the clergy and laity of the kingdom in August 1302,[1] and in the general ordinance for the levy of money for the war in Flanders in the same year.[2] The most significant of all these phrases, however, are those of the letter of 1303 to the Bishop of Paris, which communicates the ordinance made for the levy of soldiers for the war in Flanders. The ordinance was made with the deliberation and counsel of those prelates and barons who could be got together; but Philip obviously is aware that all the prelates and barons of the kingdom ought to have been summoned to consider this, and makes the excuse that time had not permitted it.[3]

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[1] 'Ordonnances des rois de France de la troisieme Race,' 1118 A.D.: "Ludovicus Dei clementia Francorum rex, communi quidem episcoporum et procerum nostrum consilio et assensu, regiæ auctoritatis decreto, instituo et decerno ut servi etc."

[2] Id., 1209: "Philippus Dei gratia Francorum Rex, O. Dux Burgundiæ; Her. Comes Nivernensis, R. Comes Boloniæ, G. Comes Sancti Pauli, G. Damma Petra, et plures alii magnates de regno Franciæ unanimiter convenerunt, et assensu publico firmaverunt ut a primo die maii in posterum ita sit de feodibus tenementis."

[3] Id., 1246: "Nos volentes super hoc cognoscere veritatem et quod erat dubium declarare, vocatis ad nos apud Aurel. baronibus et magnatibus earundem terrarum, habito cum eis tractatu et consilio diligenti, communi assertione eorum, didicimus de consuetudine terrarum illarum, quæ talis est. . . . Haec autem omnia, prout superius continentur, de communi consilio et assensu dictorum baronum et militum volumus et præcipimus de cœtero in perpetuum firmiter observari."

[4] *E.g.*, 'Ordonnances,' 1272, 1274, 1275.

[5] Id., 1277, 1278.

[6] Id., 1287.

[7] Id., 1291.

[8] Id., 1287: "C'est l'ordonnance faite par la cour de nostre Seigneur le Roi, et de son commandement, seur la manière de faire et tenir les bourgeoisies de son reaume . . . cette ordenance fut faite au Parlement de la Pentecoste l'an 1287."

It would seem clear that, while it may be right to make some distinction between the authority of the king in the royal domain and that which he exercised in France as a whole, the formulas of legislation show that there was no substantial distinction between the constitutional principles of legislation as they obtained in France and in other countries. The counsel and consent of the great men of the kingdom is no doubt what Beaumanoir meant when he said that the king had the right and authority to make "establissemens" for the whole kingdom for a reasonable cause, for the common good, and "par grant conseil."[4]

It is hardly necessary to argue that the same principles were recognised in England. The question has been handled with characteristic caution and detail by Stubbs,[1] and we cite, merely as illustrations of the principle, the formulas of legislation used by Edward I. in the Statutes of Westminster of 1275 and the Statute De Religiosis of 1279.[2] The truth is that the process of legislation, as we see it in England, corresponds precisely with the description of it by Bracton which we have cited.[3]

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[1] Id., August 1302: "Pour la nécessité apparissant, et pour le profit commun de notre royaume, il soit accordé assembliement de plusieurs de nos amez et feaux prelaz et barons, avec notre conseil, que il et toute autre personne d'église, réligion, ou de siecle queles que elles soient, baillent et delivre en present, la moitié de tout leur vesselement blanc."

[2] Id., March 1302(3): "De fidelium prelatorum baronum et aliorum consiliariorum nostrorum ad hoc presentium concilio et assensu duximus ordinandum."

[3] Id., October 1303: "Euz sur ce deliberation et consueil, avuecques nos prelaz et nos barons, que nous poons avoir eu presentement, pourceque nous ne poons pas avoir à cette deliberation tous nos prelaz et barons du royaume, sitost comme la necessité du royaume le requiert. . . . Nous avecques nos diz prelaz, barons, e autres feaux presenz, avons accordé et ordené la voie qui s'ensuit, pour la plus profitable et convenable à la besoigne et qui peut estre au moins du grief des soujies et du peuple."

[4] Beaumanoir, 'Les Contumes du Beauvoisis,' 49, 6: "Tout soit il ainsi que li rois puist fere nouveaus establissemens, il doit mout prendre garde qu'il les face par resnable cause, et pour le commun pourfit, et par grant conseil."

Cf. vol. iii. pp. 48-51.

It is important, however, to observe that the same conceptions of the nature of law and legislation are represented in the Spanish law-books and constitutional documents of the twelfth and thirteenth centuries. We have not hitherto dealt with these, but their evidence as to mediæval political principles is abundant and significant. We have thought it well to discuss them in some detail, both on account of their intrinsic importance, and also because there has been some tendency, even in recent and accomplished historians, to speak as though the Spanish kings at least in Castile claimed and exercised a legislative authority of a kind different from that which, as we have seen, obtained in the other countries of Western Europe.

The cause of this misundertanding, as far as it exists, may possibly be found partly at least in the fact that Alfonso X. of Castile sometimes uses language which might seem to imply that he claimed to be a sole and absolute legislator. In one significant passage of the 'Especulo' he sets out the grounds on which he claims to possess the legislative authority. These are: first, that if other emperors and kings who are elected to their office possess this power, much more should he, who held his kingdom by hereditary right; second, because the kings of Spain had this authority before him; and third, because he could prove his right by the Roman law, by Church law, and by the ancient Gothic laws of Spain.[1]

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[1] Cf. Stubb's 'Constit. Hist. of England,' chaps. 13 and 15 (especially pars. 160 and 224).

[2] 'Statute of Westminster,' 1275 (Statutes of the Realm, vol. i. p. 26): "Ces sunt les establissemens le Rey Edward, le fiuz le rey Henry, fes à Weymoster à son primer Parlement général apres son corounement apres la cluse Paske, lan de son regne tierz, par son conseil e par le assentement des erceveskes, eveskes, abbes, priurs, contes, barons, e la Communaute de la tere ileckes somons."

Id., Vol. i. p. 51, 'De religiosis,' 1279: "Nos super hoc pro utilitate regni congruum remedium provideri volentes, de concilio prelatorum, comitum, et aliorum fidelium regni niostro, de consilio nestro existentium, providimus, statuimus et ordinavimus etc."

[3] Cf. p. 50.

That this does not mean that Alfonso claimed that he had an absolute or sole power in making laws will appear if we look a little further. In the 'Siete Partidas' he states very emphatically that laws must not be abrogated without the great deliberation of all the good men of the country,[2] and in the following chapter he explains that if there should arise occasion for further legislation, the king is to be advised by wise and understanding men.[3] These principles correspond with the words which Alfonso used in the introduction to the 'Especulo.' He says that this collection of laws was made with the counsel and consent of the archbishops and bishops, the "Ricos Omes," the men most learned in the law, and others of the court and the kingdom.[1] When, therefore, we find Alfonso maintaining that no one can make laws except the emperor or the king, or other persons by his command, and that all laws made without his command are not laws at all,[2] we must not understand this as meaning that the king was the sole legislator, but only that he was an indispensable party to legislation, and that no laws could be made without his consent.

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[1] 'El Especulo o Espejo de Todos les Derechos,' i. 1, 13: "Por fazer entender à los omes desendudos que nos el sobredicho rey Don Alfonso, avemos poder de facer estas leyes, tambien como los otros que las fezieron ante de nos, oy mas, queremos por todas estas maneras, por razon, e por fazana e por derecho. E por razon, que si los emperadores et los reys, que los imperios et los regnos ovieren, por eleccion, pudieron fazer leys en aquello que tovieron, como en comienda, quanto mas nos que avemos el regno por derecho heredamiento. Por fazana que non tam solamiente los reyes de España que fueron antigamiente las fezieron, mas condes, e jueces, et adelantados que eran de menor guisa, et fueron guardadas fasta en este tiempo. E pues que estos las fezieron que avien mayores sobra si, mucho mas las podemos nes fazer que por la merced de Dios non avemos mayor sobre nos en el temporal.

Por derecho, ca lo puedemos probar por las leyes Romanas, e por el derecho de santa eglesia, et por las leys d'España que fezieron los Godos, en que dize en cada una destas que los emperadores et los reyes an poder de fazer leyes, et de anader en ellas, et de minguar en ellas et de camiar cada que mester sea. Onde por todas estas razones avemos poder complidamiente de facer leyes."

[2] 'Siete Partidas,' i. 1, 18: "Et porque el facer es muy gran cosa, et el desfacer muy ligera, por ende el desatar de las leyes et tollerlas del todo que non valan, non se debe facer sinon con grant consejo de todos los homes buenos de la tierra, los mas buenos et honrados et mas sabidores, razonando primeramente mucho los males que hi fallaren, por que se deben toller."

[3] Id., i. 1, 19: "Acaesciendo cosa de que non haya ley en este libro porque sea menester de se facer de nuevo, debe ayuntar el rey homes sabidores et entendudos, para escoger el derecho, porque se acuerde con ellos en qué manera deben ende facer ley, et desque accordado lo hobieren, hanlo de meter primeramente en su libro, et desi en todos los otros de su tierra sobre que él ha poder e senorio."

The truth is that, when we carry our examination a little further, we shall recognise that the general principles of legislation and of the nature of law were substantially the same in Castile as those which obtained in other Western countries in the Middle Ages.

As we have seen, the first and fundamental mediæval principle of law was the authority of custom. The 'Siete Partidas' belongs to that time when the conception of a deliberate legislative process was becoming important, at least in theory; but it is evident that the conception of the legal effects of custom was still strong in the mind of the author. In an early passage he asserts that "uso," "costumbre," and "fuero" have naturally the character of law (derecho), and that they can hinder the law (*i.e.*, the written law).[3]

The author distinguishes these terms with some care. "Uso," he says, arises from those things which men do or say for a long time and without any hindrance.[1] “Costumbre” is described as that which a people does for ten or twenty years, with the knowledge and consent of the lord of the land, and the judgments of men competent to judge.[2] “Fuero” arises from “uso” and “costumbre,” but it differs from them, for it is related to all matters which belong to law and justice,[3] and it is to be made with the counsel of good and prudent men, with the will of the lord, and the approval of those who are subject to it.[4]

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[1] 'Especulo,' Introduction: "E por esto damos ende libro . . . por que se acaesciere dubda sobre los entendemientos de las leyes e se alzasen a nos que se libre la dubda en nuestra corte por este libro que feziemos con conseio e con acuerdo de los arzobispos e de los obispos de Dios e de los ricos omes e de los mas onrados sabidores de derecho que podiemos aver e fallar, e otrosi de otros que avie en nuestra corte e in nuestro regno."

[2] 'Especulo,' i. 1, 3: "Ninguno non puede facer leyes si non emperador o rey o otro por su mondamiento dellos. E si otros las fezieren sin su mandado non deben aver nombre leyes, nin deben seer obedecidas nin guardadas por leyes, nin deben valer en ningun tienpo."

[3] 'Siete Partidas,' i. 2, Introduction: "Embargar non puede ninguna cosa las leyes que non hayan la fuerza et el poder que habemos dicho si non tres cosas; la primera, uso, et la segunda, costumbre, et la tercera fuero; et estas nacen unas do otras, et han derecho natural en si, segunt que en esto libro se muestra."

It is after Alfonso has thus dealt with law as custom that he goes on to deal with written law (ley), and he deals with this as a thing which arises out of customary law. The

[1] Id., i. 2, 1: “Uso es cosa que nace de aquellas cosas que home dice o face, et que siguen continuadamente por grant tiempo et sin embargo ninguno.”

[2] Id., i. 2, 5: “Pueblo quiere decir ayuntamiento de gentes de muchas maneras de aquella tierra do se allegan: et desto non salle home, nin muger, nin clerigo, nin lego. Et tal pueblo come este ô la mayor parte dél, si usaren diez ô veinte años a facer alguna cosa como en manera de costumbre, sabiendolo el señor de la tierra, et non lo contradiciendo et teniendolo por bien, puédenlo facer et debe ser tenido et guardado por costumbre, si en este tiempo mesmo fueren dados concejeramente de treinta iuicios arriba por ella de homes sabidores et entendudos de judgar, et non habiendo quien gelos contralle.”

[3] Id., i. 2, 8: “Fuero es cosa que se encierran estas dos maneras que habemas dicho, uso et costumbre, que cada una dellas ha de entrar en el fuero para ser firme: el uso porque los homes se fagan á él et lo amen; et la costumbre que los sea asi como en manera de heredamiento para razonarlo et guardarlo. Ca si el fuero es fecho como convien de buen uso et de buena costumbre, ha tan grant fuerza que se torna à tiempo asi como ley, porque se mantienen los homes et viven los unos con los otros, en paz et en justicia; pero ha entre él et estos otro departimiento; ca el uso et la costumbre facense sobre cosas señaladas, maguer sean sobre muchas tierras ó pocas, ó sobre algunas lugares sabidos; mas el fuero ha de ser en todo et sobre toda cosa que pertinesca señaladamente á derecho et á justicia. Et por esto es mas paladino que la costumbre ni el uso, et mas concejero; ca en todo lugar se puede decir et facer entender. Et por ende ha este nombre fuero, porque se non debe decir nin mostrar ascondidamente, mas por los plazas et por los otros lugares á quien quier, que lo quiera oir. Et los sabios antiquos posièron nombre fuero en latin por el mercado do se ayuntan los homes á comprar et á vender sus cosas; et deste lugar tomó este nombre fuero quanto en España: et asi como el mercado se face publicamente, asi ha de seer el fuero paladinamente et manefiesto.”

[4] Id., i. 2, 9: “Fecho debe ser el fuero bien et complidamente, guardando en todas cosas razon et derecho, et egualdat et justicia; et debese facer con consejo de homes buenos et sesudos, et con voluntad del señor, et con placenteria de aquellos sobre que lo ponen.”

written law is, indeed, in his judgment more honourable and better than the customary law. It can only be made by wise and understanding men, and only by the greatest and most honourable lords, like emperors and kings, and the fact that it is written prevents it from being forgotten. Even here, however, it must be observed that Alfonso admits that custom can annul the "laws."[1] It is clear that in Castile, as in the other European countries, even when the conception of the deliberate and conscious process of legislation became important, and when the written law was thought of as superior in some respects to custom, law was still conceived of as arising from custom, and it was still recognised that custom might modify and abrogate law.

We must, however, examine a little further the principles of legislation in Castile and Leon. Alfonso, as we have just seen, recognises that laws are to be made with the advice of wise and understanding men ; it might be suggested that this is not quite the same thing as the normal legislative method of other Western countries in the Middle Ages. We must, therefore, examine the proceedings of the Cortes of Leon and Castile, and of those less completely organised assemblies which preceded them. It will then become evident that these Assemblies, as far as they can be traced back, exercised a legislative or quan-legislative authority.

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[1] Id., i. 2, 11: "Honrar deben los homes las leyes en dos maneras; la una por la honra que es en aquellos que la han, la otra por él bien quel puede ende venir al que honra aquella cosa de que puede ser honrado. Et porque estas dos cosas son en las leyes, por eso las deben mucho honrar; ca maguer que el uso et la costumbre pueden menguar dellas ó tollerlas del todo, segunt que deximos de suso, et otrosi como quier que estos derechos se tornen unos en otros, asi como saliendo del uso costumbre, et de la costumbre fuero, et del fuero ley, et en decendiendo de la ley fuero, et del fuero costumbre, et de la costumbre uso; todavia la ley ha estas honras señaladas, demas de aquestas otras, ca despues que la ley es fecha, ha de ser fuero consejero et publicado: et otrosi recibe en si costumbre para ser costumbrado por ella: et otrosi debe ser usada, porque en otra maniera non se podrian della aprovechar las gentes. Et por ende como quier que se torne en estas otras, non es la sua tornada si non en ganando et en recebiendo poder et honra dellas. Et aun ha otra manera, ca las leyes non las pueden facer si non los mayores señores et los mas honrados, asi como emperadores ó reyes; porque se entiende que per quanto son mas nobles et de mayor lugar los que los facen, tanto mayor honra reciben ellas. Et sin esta han otra muy grande, que son ciertas et escriptas, et non se deben judgar por entendemiento de homes de mal seso, nin por fazanas nin por albedrio, sinon quando menguase la ley en lugares, ó la hobiesen de emendar ó á facer de nuevo; ca estonce es de catar homes entendudos et sabidores para albedriar et veer toda cosa porque se major puede facer ó emendar, et mas con razon. . . . . . .
Onde por todas estas razones han honra las leyes que son fechas, et ordenadas et puestas en escripto, asi como de sus deximos, sobre todos los fueros, et usos et costumbres que los homes ponen et pueden poner; ca lo al se puede camiar por voluntad, et esto non sinon por derecho."

The Bishops, Abbots, and Optimates of what they term the kingdom of Spain met at Leon in 1020 A.D., and in the presence and at the command of the king, Alfonso and his wife made certain decrees which, as they said, were to be firmly established for future times.[1] King Ferdinand held a council at Coyanza in 1050 with the Bishops and Abbots and Optimates of his kingdom, and there issued his decrees.[2]

We have an explicit declaration of the legislative authority of these councils in a clause of the proceedings of that Council of Leon, probably of the year 1188, in which there is a reference to the presence of elected representatives of the cities. (We shall return to this matter in a later chapter.) The king, Alfonso IX., promised that he would not make war or peace or issue a decree (placitum) without the counsel of the bishops, nobles, and good men by whose counsel he recognised that he ought to be ruled.[3]

We find the same King Alfonso IX. at a council held at

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[1] 'Collecion de Cortes De los Reinos de Leon et de Castilla,' 1 : "Era M. L. viii. sub Kalend. Augusti, in presentia Domini Adefonsi et uxoris ejus Geloire, convenimus apud Legionem in ipsa sede beatæ Marie omnes pontifices, abbates et obtimates regni Hyspaniæ, et jussu ipsius regis talia decreta decrevimus, quæ firmiter teneantur futuris temporibus."

[2] Id., 3 : "Ego Fredenandus rex et Sanctia regina ad restorationem nostræ Christianitatis, fecimus concilium in castro Cojanca, in diocesi scilicet Ovetensi cum episcopis et abbatibus et totius nostri regni optimatibus."

[3] Id., 7 : "Ego dominus Aldefonsus Rex Legionis et Galliciæ, cum celebrarem curiam apud Legionem cum archiepiscopis et episcopis et magnatibus regni mei, et cum electis civibus ex singulis civitatibus, constitui et juramento firmavi, quod omnibus de regno meo, tam clericis quam laicis servarem mores bonos, quos a predecessoribus meis habent constitutos. . . . (3) Promisi etiam, quod nec faciam guerram vel pacem, vel placitum, nisi cum concilio episcoporum, nobilium, et bonorum hominum per quorum consilium debeo regi."

Leon in 1208, which was attended by the bishops, the chief men, and the barons of the whole kingdom, and the representatives of the cities, issuing a law, after much deliberation and with the consent of all.[1]

Finally, we find the same principles of legislation expressed by Alfonso X. himself, in issuing the decrees of a council held at Valladolid in 1258 for Castile as well as Leon. He relates how he had taken counsel with the archbishops, the bishops, the "rricos ommes," and the good men of the cities of Castile, Estremadura, and Leon about many things which had been done to the hurt of himself and all his country, and that they had agreed to put an end to these. To that which they had established he gave his authority, that it should be received and kept throughout all his kingdoms.[2] It is not necessary to carry the matter further, for it is evident that we have here the normal procedure in legislative or quasi-legislative action. The same or similar formulas are used and the same principles expressed in the proceedings of the Cortez of Valladolid of 1295 and 1299, of Burgos in 1301, of Palencia in 1313, and of Burgos in 1315.[3]

It appears to us to be evident that the Spanish conception of the nature and source of law was in its most important aspects the same as that of the other countries of Western Europe.[4]

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[1] Id., 10: "Sub era mccxlvi mense Februario convenientibus apud Legionem regiam civitatem, una nobiscum venerabilium episcoporum cetu reverendo, et totius regni primatum et baronum glorioso colegio, civium multitudine destinatorum a singulis civitatibus considente. Ego Alfonsus, illustrissimus rex Legionis Galecie et Asturiarum et Extremature, multa deliberatione prehabita, de universorum consensu hanc legem edidi mihi et a meis posteris omnibus observandam."

[2] Id., 13: "Don Alfonso . . . Salut e gracia. Sepades que yo ove mio acuerdo e mio conseio con mios hermanos los Arçobispos e con los Obispos e conlos rricos ommes de Castiella e de Extremadura e de tierra de Leon que fueron comigo en Valladolit, sobre muchas cosas sobeianas que se fazien que eran a danno de nos e de toda mi tierra, e accordaron delo toller e de poner cosas sennaladas e ciertas porque biuades. Et lo que ellos pusieron otorgué yo delo tener e delo fazer tener e guardar por todos mios regnos."

[3] Id., 21, 25, 27, 36, 38.

[4] It is possible that the legislative method of the kingdom of Sicily was different, but we are inclined to doubt whether the difference is not rather apparent than real. The question is, however, complicated, and we do not wish to express a dogmatic judgment upon it.

It is then, we think, clear that the normal tradition of the thirteenth century was characteristically represented by the words of Bracton which we have cited. The emperor or king had his place in legislation, but it was not an isolated place, nor had he any arbitrary or unlimited authority. When circumstances called for anything more than the enunciation or restatement of custom, the ruler acted with the counsel and consent of the great men, lay and ecclesiastical, and behind them we see more or less distinctly the whole community, for, as must be remembered, the custom of the community was the ultimate source of law.

CHAPTER VI.

THE SOURCE OF THE LAW OF THE STATE—II.

We have in the last chapter seen that the normal conception of the Middle Ages was that law is the custom or the declared will of the whole community, and that this continued to be predominant in the thirteenth century.

It is, however, true that it is in the twelfth and thirteenth centuries that we find the appearance and the first development of another conception of law—that is, the conception that the prince, whether emperor or king, is the sole source of law; and there is no doubt that we have here the beginnings of a political idea which became of high importance in that change in the political civilisation of continental Europe which accompanied the Renaissance.

There can be no doubt as to the literary source of this conception; it was the study of the Roman law as revived first in Bologna, and then throughout Europe. We have in a previous volume considered in detail the most important aspects of the political conceptions of the great Civilians of Bologna, and we must refer our readers to this for a detailed discussion of the matter.[1]

We must, however, remind them that the theories of the Bologna jurists about the sources of political and legislative authority had two aspects. They all accepted from the Roman law the principle that the emperor had the power of making law, and they all held that this authority was derived from the Roman people, who had conferred upon him their own legislative power. They differed on the question whether the Roman people had so alienated their authority to the emperor that they retained no power of legislation, and could not reclaim it, or whether this grant of authority was subject to the controlling power of their own custom, and could be resumed by them. It is, however, true that in either form the conception that the ruler exercised in his own person the legislative authority of the community was wholly new to the Middle Ages, and in this chapter we must consider the question how far this new conception assumed an important place in the political theory of the time. That it had little practical importance we think we have made clear in the last chapter.

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[1] Cf. vol. ii. part i., especially chaps. 6 and 7.

We begin, therefore, by considering the evidence of some of the jurists of the thirteenth century, apart from those with whom we dealt in the second volume. The most important of these Civilians was Odofridus, but two others, Boncompagni and John of Viterbo, are worth noticing. Boncompagni's work, 'Rhetorica Novissima,' as it appears, was produced in 1235, and in it he uses some words which are significant of his conceptions of the relation between the emperor and the law. In one place he suggests a form of words with which the emperor might be addressed. "Most serene emperor, who keepest all natural and civil laws in the shrine of thy heart,"[1] and in another place he describes the greatness of the jus civile, and refers to the words of Theodosius and Valentinian that, though the prince is "legibus absolutus," he acknowledges that he is bound by the laws.[2] John of Viterbo, whose work is probably later, in the course of an important discussion of the nature and relations of the spiritual and temporal powers, to which we shall recur, says that God subjected the laws to the emperor, and gave him as a living law to men.[1] These phrases are rhetorical and not very important, but they are interesting as expressing in very high terms the principle that the emperor was the source of law. Much more important, however, are the emphatic words of Odofridus, who died, according to Savigny, in the year 1265, which we cited in the last chapter, especially as bearing on the continuing legal authority of the custom of the Roman people; but his words have a much larger significance than this. He not only maintains that it was the Roman people from whom the emperor received his legislative authority, but he vehemently contradicts the opinion of Placentinus, that the emperor alone had now the power of making laws. He maintains that, on the contrary, the Roman people could still make laws, and he audaciously interprets the assertion of Justinian that in his time only the emperor could make laws ('Cod.,' i. 14, 12) as excluding not the people, but only other individual persons, and adds that, when it was said that the people transferred (transtulit) its "imperium legis condere" to the prince, he understood this to mean that it granted its authority to him, but did not abdicate its own power.[2] Odofridus, it would seem, looks upon the prince as one to whom the legislative power may be entrusted, but he refuses altogether to recognise him as the sole legislator. It is clear that Odofridus continued the tradition of Azo and Hugolinus,[1] and that, while they accepted the tradition of the Roman law, that the prince had been invested by the people with legislative authority, they also represented the normal mediæval principle that the community continued to be the source of law.

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[1] Boncompagni, 'Rhetorica Novissima,' v. 4: "Romanorum imperator serenissime . . . qui cuncta naturalia et civilia jura pectoris arcano servatis."

[2] Id. id., ix. 5: "Jus civile urbis et orbis obtinet monarchiam, dum statuit, interpretatur, jubet, judicat, punit atque permittit; unde qui contra jus loquitur, peccat in crimine lese majestatis, cujus digna vox principem legibus absolutum profiteri dignatur esse legibus obligatum."

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[1] John of Viterbo, 'De Regimine Civitatum,' 128: "Deus subjecit leges imperatori et legem animatam eum misit hominibus."

[2] Odofridus, 'Commentary on Digest,' i. 3, 32: "Dixit Pla. (Placentinus) olim consuetudo vincebat legem, et ita loquitur lex nostra in fi . . . nam olim populus Romanus poterat legem condere, vn̄ lex est quod populus Romanus, etc. . . . non est ergo mirum si contraria ejus consuetudo tollat legem, quia ejus est tollere cujus est condere. . . . Sed hodie solus princeps potest legem condere, ut C. de le. et const. l. f. ('Cod.,' i. 14, 12), unde non debet consuetudo populi posse leges imperatoris tollere, et sic loquitur l. nostra quia hoc esset inconveniens quod consuetudo populi tolleret legem principis.

Sed signori, hanc solutionem non approbamus, quia sicut olim populus poterat legem condere, sic et hodie potest, vn̄ debet posse consuetudo populi legem tollere, nec obstat quod dicitur quod solus princeps sive imperator potest legem condere, quia illa dictio 'solus' excludit singularem personam, non populum, nam populus bene potest hodie legem condere, sicut olim poterat, ut ibi dixi S̄. e. tr. l. i. (his own 'Comm. on Digest,' i. 3, 1). Item non obstat quod alibi dicitur quod populus omne imperium legis condere transtulit in principem, ut f̄. d. cf. p̄. p̄. l. una in pn. quia intelligo transtulit i, concessit, non tamen a se abdicando, ut J. de Consti. Principum, l. 1 ('Dig.,' i. 4, 1)."

It is interesting to observe that the same principle is maintained by the most important contemporary jurist of the kingdom of Naples, Andrew of Isernia, in his work on the Constitutions of the kingdom of Naples. He was evidently a pupil of the Bologna Civilians, but was also familiar with the principles of the feudal jurists. In one place, where he is commenting on the legal doctrine that it was by a "lex regia" that the people had transferred its authority to the king, he maintains that the legislative authority was inherent in the royal office, so that, if to-day a free people were to set up a king, he would "eo ipso" possess the authority of making laws, and that the same thing would hold if the king were created by some person who had authority to do this, as the Pope had in the case of Sicily. But he also suggests that a people who had transferred their authority to a king might revoke this for a reasonable cause, as, for instance, if the king should become a tyrant and abuse his power, or if he should prove unfit for kingship.[2]

We turn from the jurists to the general political literature. And first we must examine the position of Aquinas. It is not easy to define his position in precise terms, for while his treatment is characteristically lucid up to a certain point, he, curiously enough, omits to deal explicitly with some important questions concerning the source of the legislative power.

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[1] Cf. vol. ii. pp. 63-67.

[2] Andreas de Isernia, 'Peregrina vel Agnosis ad omnes regni Neapolitani Constitutiones,' Fol. 38, v.: "Lege regia transtulerunt regnum. Cum ad hoc regem pertinet eo ipso quod est rex ut subditis suis imponat legem et condat. Unde si hodie liberi populi constituerunt sibi regem, eo ipso super eos rex haberet legis condende potestatem. Sicut si faciat regem ille qui potest, ut papa regem Siciliæ, per ea quæ dicta sunt, in prohemio. S̃. dicitur Hieremie iii. 'Constitui te super reges et regna,' de Vicario Christi in terris qui Papa est. . . . Item primo casu quando transtulit nunquam revocavit, nisi ex causa, ut si rex fiat tyrannus et sic abutitur . . . vel non esset idoneus ad regimen."

We have in an earlier chapter discussed the terms of Aquinas' distinction between Natural and Positive Law, and we have seen that he says that Positive Law arises from a common agreement.[1] In another clause of the same article he explains that an agreement might be either private or public, and a public agreement is either that to which the whole people agrees, or that which is ordained by the prince who has the care of the people, and bears its person (qui curam populi habet et ejus personam gerit), and this is Positive Law.[2] The statement is significant of the nature of law, but it does not explain how the prince comes to have the care of the people and to bear its person.

In another passage he indicates, indeed, very plainly the nature and purpose of law—*i.e.*, the law of any particular community. He begins by citing the words of St Isidore of Seville, "Lex est constitutio populi, secundum quam majores natu simul cum plebibus aliquid sanxerunt," and continues that law is directed to the common good. To order things for the common good belongs either to the whole multitude or to him who represents (gerens vicem) the whole multitude, and therefore the authority to make law belongs either to the whole multitude or to that public person who has the care of the whole multitude.[1] The statement is clear and important, both in its description of the end or purpose of law and in the words used to describe the legislator as "gerens vicem"—that is, as the vicar or representative of the multitude, and his responsibility for the good of the community; but again Aquinas does not tell us how the "public person" comes to have this authority.

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[1] Cf. p. 39.

[2] St Thomas Aquinas, 'Summa Theologica,' 2. 2, 57, 2: "Respondeo dicendum, quod sicut dictum est (art. præc.) jus sive justum est aliquod opus adequatum alteri secundum æqualitatis modum: dupliciter autem potest alicui homini esse aliquid adæquatum: uno quidem modo ex ipsa natura rei; puta cum aliquis tantum dat, ut tantundem recipiat; et hoc vocatur jus naturale: alio modo aliquid est adæquatum vel commensuratum alteri ex condicto, sive ex communi placito; quando scilicet aliquis reputat se contentum, si tantum accipiat. Quod quidem potest fieri dupliciter: uno modo per aliquod privatum condictum; sicut quod firmatur aliquo pacto inter privatas personas: alio modo ex condicto publico; puta cum totus populus consentit, quod aliquid habeatur quasi adequatum, et commensuratum altcri; vel cum hoc ordinat princeps, qui curam populi habet et ejus personam gerit; et hoc dicitur jus positivum."

The truth is that St Thomas clearly held that there were two possible cases with regard to the law-making power. In a passage to another part of which we have already referred in dealing with the authority of custom, he says that either the multitude may be free and can make laws for itself, or it may not possess the free power of making laws, or abrogating the laws made by a superior.[2] In another place he relates the different kinds of laws to the forms of the constitution of the State: in the kingdom there are the constitutions of the prince; in the aristocracy, the "responsa prudentum" or the "Senatus consulta"; in the democracy the "plebiscita," but again he does not discuss the question how these various authorities came to have the legislative power. He does, however, in this passage indicate his own clear preference for a mixed constitution in which, as St Isidore had said, the laws are made by the "majores natu cum plebibus."[1]

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[1] Id. id., 1. 2, 90, 3: "Sed contra est quod Isidorus dicit in lib. v. Etym. (c. 10) et habetur in Decretis (Gratian, Decretum, D. 2, 1). 'Lex est constitutio populi, secundum quam majores natu simul cum plebibus aliquid sanxerunt,' non est ergo cujuslibet facere legem.

Respondeo dicendum, quod lex proprie primo, et principaliter respicit ordinem ad bonum commune: ordinare autem aliquid in bonum commune, est vel totius multitudinis, vel alicujus gerentis vicem totius multitudinis; et ideo condere legem vel pertinet ad totam multitudinem, vel pertinet ad personam publicam, quæ totius multitudinis curam habet; quia et in omnibus aliis ordinare in finem est ejus, cuius est proprius ille finis."

[2] Id. id., i. 2, 97, 3: "Ad tertium dicendum, quod multitudo, in qua consuetudo introducitur, duplicis conditionis esse potest: si enim sit libera multitudo, quæ possit sibi legem facere, plus est consensus totius multitudinis ad aliquid observandum, quod consuetudo manifestat, quam auctoritas principis, qui non habet potestatem condendi legem, nisi inquantum gerit personam multitudinis: unde licet singulæ personæ non possint condere legem tamen totus populus condere legem potest: si vero multitudo non habeat liberam potestatem condendi sibi legem, vel legem a superiori potestate positam removendi, tamen ipsa consuetudo in tali multitudine prevalens obtinet vim legis, in quanto per eos toleratus, ad quos pertinet multitudini legem imponere; ex hoc enim ipso videntur approbare quod consuetudo introduxit."

In the next chapter we shall have occasion to consider more fully St Thomas' theory of the best form of government and the nature and limits of political authority, and we shall consider how far this may be thought to throw any further light upon his theory of legislation.

In the meanwhile it would seem true that St Thomas had no one definite theory as to the source of legislative authority, but rather seems to think that in some constitutions the people are the ultimate source of law, in some not. It is certainly very singular that St Thomas, who was evidently well acquainted with the Roman law, should nowhere refer to the universally accepted doctrine both of the Corpus Juris Civilis and of the Bologna Civilians, that it was the Roman people who had conferred upon the prince his legislative authority. If we were to venture a conjecture, we should be inclined to say that this may possibly be a consequence of his study of Aristotle's discussion of the various forms which government may assume. Even so, it is curious that he should not show the influence of Aristotle's consideration of the question whether it was better to be governed by the best men or by the best laws.[2]

In the last years of the thirteenth century the theory of an absolute monarchy was asserted by an important writer, by that Egidius Colonna to whom we have referred in an earlier chapter, as illustrating the influence of Aristotle,[1] not, indeed, that in this matter he follows Aristotle; on the contrary, as we shall see, he deliberately differs from him. The origins of the position of Egidius are indeed obscure; there is no trace in his work of the conception that this absolute authority rests upon a "Divine Right"—that is, upon the theory that the prince was in such a sense the representative of God that he must be obeyed whether he was good or bad, right or wrong. This theory was stated by St Gregory the Great, and was known in the Middle Ages, and had even been asserted by some writers in the course of the struggle between Henry IV. and the Papacy,[2] but it does not appear that it had any importance in the twelfth and thirteenth centuries, nor does Egidius Colonna appeal to it. What is, however, much more remarkable is that Egidius Colonna does not seem to derive his principles, at least directly, from those Civilians who had maintained that the whole and sole legislative authority in making law belonged to the emperor.[3] It cannot be doubted that he was acquainted with the Roman law and the work of the Bologna Civilians, but it is not from these that he draws his arguments. It is possible that this may partly be explained by his curious and somewhat laughable contempt for the lawyers; in one place he speaks of them as "ydiote politici."[4]

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[1] Id. id., i. 2, 95, 4: "Tertio est de ratione legis humanæ, ut instituatur a gubernante communitatem civitatis, sicut supra dictum est (i. 2, 90, 3) et secundum hoc distinguuntur leges humanæ secundum diversa regimina civitatum, quorum unum, secundum Philos in III. Politic, est regnum, quando scilicet civitas gubernatur ab uno: et secundum hoc accipiuntur constitutiones principum. Aliud vero regimen est aristocratia, id est principatus optimorum, vel optimatum: et secundum hoc sumuntur responsa prudentum et etiam senatus consulta. Aliud regimen est oligarchia, id est principatus paucorum divitum et potentum, et secundum hoc sumitur jus practorium, quod etiam honorarium dicitur: aliud autem regimen est populi, quod nominatur democratia; et secundum hoc sumuntur plebiscita. Aliud aut est tyrannicum, quod est omnino corruptum: unde ex hoc non sumitur aliqua lex. Est enim aliquod regimen ex istis commixtum, quod est optimum: et secundum hoc sumitur lex, 'quam majores natu simul cum plebibus, sanxerunt,' ut Isidorus dicit" ('Etym.,' v. 10).

[2] Aristotle, 'Politics,' iii. 15.

The immediate antecedents, therefore, of this defence of absolutism are obscure, but the importance of it is great. Some two hundred years later Sir John Fortescue drew a sharp distinction between the "regimen politicum et regale" of England and the "regimen regale" of France, between the kingdom where the king governs according to laws made by the whole community, and the kingdom where the king makes the laws himself.[5] It may, indeed, be doubted whether

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[1] Cf. p. 13.

[2] Cf. vol. i. p. 152 *seq.*; vol. iii. part ii. chap. 4.

[3] Cf. vol. ii. pp. 59-67.

[4] Egidius Colonna, 'De Regimine Principum,' ii. 2, 8: "Sic legiste quia ea de quibus est politica dicunt narrative et sine ratione, appellari possunt ydiote politici."

[5] Sir John Fortescue, 'Governance of England,' 1, 3, &c.; 'De Laudibus,' 9, 18, 35, &c.

Sir John Fortescue was not, for his own time, pressing the distinction too far, whether it was really true that the constitutional principles of the French kingdom were in his time as clearly defined as he thought; but he was only anticipating the full developments of the seventeenth and eighteenth centuries.

However this may be, the distinction which Fortescue made was one of the greatest significance, and it is here, for our purposes, important to observe that the distinction between the two forms of government was already being made at the end of the thirteenth century, and that Egidius Colonna expressed his preference for the "regimen regale."

Before we consider his position, we may, however, observe that a distinction which is parallel, if not quite identical, is discussed by Ptolemy of Lucca, to whom is now generally ascribed the authorship of the greater part of the treatise, 'De Regimine Principum,' which was begun by St Thomas Aquinas.[1] In one place Ptolemy ascribes to Aristotle the distinction between two forms of government, the political and the despotic. He describes the first as that in which the country or community is governed, whether by many or by one, according to its own laws (ipsorum statuta), while in the second the prince governs according to a law which is in his own heart, and this form of government has the advantage that it is more like that of God. On the other hand, the despotic government, which is in its nature like the relation of the master to the slave, is in its nature arbitrary, and he illustrates this by the words in which Samuel described the nature of kingship to the Israelites (1 Sam. viii. 10-18), and pointed out to them the advantages of the "regimen politicum" which he and the judges had administered. Ptolemy contends that there are considerations in favour of each form, which he now distinguishes as the "regimen politicum" and the "dominium regale." The first is well adapted to the state of innocence or to the rule of men who are wise and virtuous, like the ancient Romans, but the second to the government of those who are perverse and foolish, and the number of the foolish is infinite. He also urges that the characteristics of the peoples who inhabit different parts of the world are different, and that some seem adapted to slavery and some to freedom. There are therefore, he concludes, some reasons for preferring the "polity" to the kingdom, and some for preferring the "regale dominium" to the "polity."[1]

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[1] Cf. p. 24.

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[1] Ptolemy of Lucca (St Thomas Aquinas), 'De Regimine Principum,' ii. 8: "Duplex enim principatus ab Aristotele ponitur in sua Politica quorum quilibet suos habet ministros, licet plures ponat in v. Politicorum, ut supra est distinctum, et infra etiam declarabitur, politicus videlicet, et despoticus. Politicus quidem, quando regio sive provincia, sive civitas, sive castrum, per unum vel plures regitur secundum ipsorum statuta, ut in regionibus contingit Italiæ, et precipue Romæ, ut per senatores et consules pro majore parte ab urbe condita. . . . Et inde sequitur in regimine politico diminutio, quia legibus solum rector politicus judicat populum, quod per regale dominium suppletur, dum non legibus obligatus, per eam censeat, quæ est in pectore principis, propter quod divinam magis sequitur providentiam, cui est cura de omnibus, ut in libro Sapientiæ dicitur. . . .

ii. 9. Est autem hic advertendum, quod principatus despoticus dicitur qui est domini ad servum, quod quidem nomen græcum est. Unde quidam domini illuis provinciæ adhuc hodie despoti vocantur, quem princpatum ad regalem possumus reducere, ut ex sacra liquet scriptura. . . . Traduntur enim leges regales per Samuelem prophetam Israelitico populo quæ servitutem important. . . . Filios vestros tollet, et ponet in curibus suis . . . et præcursores quadrigarum suarum, et constituet aratores agrorum suorum . . . et sic de aliis conditionibus ad servitutem pertinentibus, quæ in 1 Lib. Regum traduntur, per hoc quasi volens ostendere quod regimen politicum, quod erat judicum, et suum fuerat, fructuosius erat populo, cujus tamen superius contrarium est ostensum. Ad cujus dubii declarationem sciendum est quod ex duplici parte regimen politicum regali preponitur: primo quidem, si referamus dominium ad statum integrum humanæ naturæ, qui status innocentiæ appellatur, in quo non fuisset regale regimen sed politicum. . . . Unde apud sapientes et homines virtuosos, ut fuerunt antiqui Romani, secundum imitationem talis naturæ regimen politicum ejus fuit.

Sed quia perversi difficile corrigentur, et stultorum infinitus est numerus, ut dicitur in Ecclesiastico, in natura corrupta regimen regale est fructuosius; quia oportet ipsam naturam humanam sic dispositam, quasi ad sui fluxum, limitibus refrænare: hoc autem facit regale fastigium . . . ergo quantum ad hoc excellit regale dominium. Amplius autem et situs terræ secundum stellarum aspectum regionem disponit, ut dictum est supra: unde videmus quasdam provincias aptas ad servitutem, quasdam autem ad libertatem. . . . Patet igitur qua consideratione politiam regno, et regale dominium politiæ præponimus."

Ptolemy of Lucca was a pupil of St Thomas Aquinas, but we must not attribute to St Thomas the responsibility for the indifference with which he treats the two forms of government. St Thomas does, indeed, recognise that in some cases a people is free and makes its own laws, while in others it does not possess this power; but in one place at least, as we have seen,[1] he does express his own preference for the mixed constitution in which the laws are made by the "majores natu cum plebibus." Still less must we attribute to St Thomas the responsibility for the dogmatic preference which Egidius Colonna expresses for the "regimen regale."

We must now examine the position of Egidius in more detail. The work with which we are here concerned is his treatise, 'De Regimine Principum.' It was written probably before the death of Philip III. of France, to whose son, afterwards Philip IV., Egidius was apparently in some relation of tutor or teacher. We have already drawn attention to his position, as having learned, probably through St Thomas Aquinas, to know of the Aristotelian political theories. We are here concerned with his conception of law and its relation to the prince.

Egidius makes a distinction between the "regimen regale" and the "regimen politicum" like that of Ptolemy of Lucca. The State may, he says, be ruled in two ways; the "regimen regale" is that under which the prince rules according to his own will (arbitrium) and according to laws which he has made himself. The regimen politicum is that where the prince rules, not according to his own will or according to laws which he made, but according to the law which the citizens have made.[2] As he puts it in another place, laws may be made either by the prince or by the whole people, if it is the people which rules and elects the ruler.[1]

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[1] Cf. pp. 69, 70.

[2] Egidius Colonna, 'De Regimine Principum,' ii. 1, 14: "Civitas autem, quantum ad præsens, spectat, duplici regimine regi potest, politico scilicet et regali. Dicitur autem quis præesse regali dominio: cum præest secundum arbitrium et secundum leges quas ipse instituit. Sed tunc præest regimine politico, quum non præest secundum arbitrium, nec secundum leges quas ipse instituit, sed secundum eas quas cives instituerunt."

Like Ptolemy he recognises the two forms of government as possible and legitimate, but he also contends that it is better to be ruled by the king than by the law. This is the more remarkable, because he carefully states that Aristotle had maintained that the true prince was an instrument of the law, and that it was better to be governed by a good law than by a good king. Egidius states Aristotle's argument as he understood it, but only in order to maintain the opposite—namely, that it is better to be ruled by the king than by the law; and he adds that, while the king is under the natural law, he is not under the positive law.[2]

This is, indeed, a highly significant development of political theory, for this is a thoroughgoing contradiction of the principles of Bracton, and practically of all mediæval theory; for the principle that the king is the servant and not the master of law belongs not only to the feudal system, but to the whole structure of mediæval society, and is expressed by practically all the mediæval writers, except some of the Bologna Civilians.[1] It is, indeed, with Egidius Colonna, as we have said, that we come on the beginning of that conception of the monarchy which was to be developed in the sixteenth and seventeenth centuries.

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[1] Id. id., iii. 2, 27: "Leges que ordinant nos in commune bonum condende sunt a principe, cui est ordinare et dirigere alios in tale bonum, vel condende sunt a toto populo, si totus populus principetur, et sit in potestate ejus eligere principantem. Nulla est ergo lex quæ non sit edita ab eo cujus est dirigere in bonum commune: nam si est lex divina et naturalis condita a Deo, cujus est omnia dirigere in seipsum; qui maxime est commune bonum; quia est bonum omnis boni: lex vero humana et positiva condita est a principe vel a toto populo, si totus populus principetur."

[2] Id. id., iii. 2, 29: "Nam ut dicitur 5 Ethicorum, princeps debet esse custos justi id est juste legis. Est ergo princeps, si debite principetur, quasi quoddam organum juste legis, ut, quod lex fieri præcipit, rex per civilem potentiam observari facit: quare si quod est principalius eligibilius est in regimine, q̃. organum et instrumentum; regi optima lege eligibilius est quam regi optimo rege: hoc est ergo quod ait philosophus III. Politicorum, quod eligibilius est principari legem, quia hos s. reges aut principes instituendum esse servatores legis et ministros legum. . . . Sciendum est regem et quemlibet principantem esse medium inter legem naturalem et positivam: nam nullus recte principatur nisi agat ut recta ratio dictat . . . . . Quare positiva lex est infra principantem sicut lex naturalis est supra, et si dicatur legem aliquam positivam esse supra principantem, hoc non est ut positiva sed ut in ea reservatur virtus juris naturalis. Cum ergo queritur utrum melius sit regnum aut civitatem regi optimo rege aut optima lege; si loquamur de lege naturali patet hanc principaliorem esse in regendo quam sit ipse rex, eo quod nullus sit rectus rex nisi in quantum innititur illi legi . . . . . Sed si loquamur de lege positiva, melius est regi optimo rege, quam maxime in casibus illis in quibus talis lex deficit, et dicit universaliter quod non est universaliter observandum. Secundum hoc ergo concludebat ratio in oppositum facta, quod melius est regi rege quam lege, eo quod lex particularia determinare non potest."

It must, however, be observed that Egidius carefully and consistently maintains the Aristotelian principle that the test of all good government is that it is directed to the common good, and that, just because the prince makes the laws and is himself a living law, he must maintain justice; and that if he fails to do this he is not worthy to be a king, and loses the royal dignity.[2] He does not hesitate to describe the ruler who pursues his private good and not the public welfare as a tyrant.[3]

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[1] Cf. especially vol. i. chap. 19; vol. ii. part i. chap. 7; vol. iii. part i. chap. 2: part ii. chap. 5.

[2] Id. id., i. 1, 12: "Nam regens multitudinem debet intendere commune bonum. Prima via sic patet; nam si lex est regula agendorum: ut haberi potest ex 5 Ethic, ipse judex et multum magis ipse rex cujus est leges ferre debet esse quedam regula in agendis. Est enim rex sive princeps quædam lex; et lex est quædam rex sive princeps. Nam lex est quidam inanimatus princeps. Princeps vero est quædam animata lex. Quantum ergo animatum inanimatum superat, tantum rex sive princeps debet superare legem. Debet etiam rex esse tante justitie et tante equitatis ut posset ipsas leges dirigere, cum in aliquo casu leges observari non debeant ut infra patebit. Dubitare ergo utrum rex debeat esse equalis et justus est dubitare utrum ipsa regula debeat esse regulata. Si enim regula ab equalitate deficiat nihil regulatum erit, quum omnia per regulam regulentur. Sic si reges sunt injusti, disponunt regnum ut non observetur justitia. Maxime ergo studere debent ne sint injusti et inequales; quia eorum injustitia et inequalitas tollit ab eis regiam dignitatem. Nam reges injusti etsi dominant per civilem potentiam non tamen digni sunt ut sint reges, cum enim deceat regulam esse rectam et equalem. Rex, quia est quædam animata lex, est quædam animata regula agendorum, ex parte ipsius personæ regiæ maxime decet ipse servare justitiam."

[3] Id. id., i. 3, 3: "Nam ut superius dicebatur et ut philosophus in Pol. probat differentiam esse inter regem et tyrannum, quod rex principaliter intendit bonum commune, et intendendo bonum commune intendit bonum privatum, quia salvato regno salvatur

In a later work, written, as it is thought, in 1297, with reference to the abdication of the Papal throne by Pope Celestine in 1294, while Egidius maintains that those who are superior in intelligence and energy should rule over others, he also argues that this must be done by the consent of men, and that by this same consent the ruler may retire or be deposed.[1] This belongs, however, rather to the subject of our next chapter, but we mention it here as confirming the impression of the last passage cited.

It is, however, also noticeable that in one place he urges that when it is considered how much good arises from kingship, not only when kings rule well, but even when in some respects they play the tyrant, the people should strive to obey, for some tyranny on the part of the ruler is more tolerable than the evils which would arise from disobedience to the prince.[2]

The position of Egidius Colonna is, as we have said, remarkable, and different from the normal mediæval tradition.

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rex. Tyrannus autem e contrario principaliter intendit bonum privatum, ex consequenti autem et quasi per accidens intendit bonum commune."

Cf. iii. 2, 2 and 6.

[1] Id., 'De Renuntiatione Papæ,' xvi. 1: "Revertamur ergo ad propositum, et dicamus, quod non est super naturam negotii, nec supra conditionem rerum, quod homines hominibus præferuntur: immo est naturalis, quod qui sunt potentiores in intellectu et magis vigent industria, illi præsint. Et ideo videmus, quod homines naturaliter præsunt bestiis, viri feminis, senes pueris. . . . Inter adultos etiam aliquibus dedit Deus majorem industriam, quam aliis. Ex hoc ergo voluit, quod non solum homines bestiis, viri feminis, adulte pueris præessent, sed etiam voluit quod et ipsi adulti aliquem super se præficerent, quia ut dicitur in Proverbiis, 'Intelligens gubernacula possidebit.' Vult enim sapiens Solomon, quod per intelligentiam homo sit aptus ad alios gubernandum. Sed quamvis sic requirit natura negotii, quod scientes melius pericula prævidere aliis præficiantur, ut sub eorum gubernaculo multitudo salvetur, oportet tamen quod hoc compleatur per consensum hominum. Et sicut per consensum hominum perficitur et completur, ut quis aliis præficiatur, sic per consensum hominum contrario modo factum fieri potest, quod præfectus cedat, vel quod etiam deponatur."

[2] Id., 'De Regimine Principum,' iii. 2, 34: "Si ergo consideretur quantum bonum advenit ex rege; non solum regibus recte regentibus, sed etiam dato quod in aliquo, tyrannizarent, studeret populus obedire illis. Nam magis est tolerabilis aliqualis tyrannides principantis, quam sit malum quod consurgit ex inobedientia principis, et ex prevaricatione mandatorum ejus."

It may possibly be suggested that we have here at least some significant evidence as to the tendency of the political institutions and theory of France. We must observe, however, that while it is true that Egidius was writing in France, and for a French prince, he was not himself a Frenchman, but an Italian.

There are two contemporary French writers with whom we shall have more to do later, but whose work we may examine with regard to our present point. The first is the author of the tract entitled 'Disputatio inter Clericum et Militem,' which deals with the conflict between Boniface VIII. and Philip the Fair, written not earlier than 1296. In one passage he claims that the legislative power of the king of France is the same as that of the emperor, that as the emperor has power to make and unmake laws for the whole empire, so also the king of France has power not only to repudiate the laws of the emperor, but also to promulgate new ones; he can add to, can diminish, or modify laws and privileges, taking account always of equity and reason, for he has no superior. The author seems to mean that he can do this, either by his own authority or with his chief men.[1] The author is clearly thinking of the legislative power of the French king in terms of the position of the emperor in the Roman jurisprudence; and while he formally allows for the possibility of the king legislating with the advice of his "proceres," he does not seem to think of this as essential.

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[1] 'Disputatio inter Clericum et Militem,' p. 80: "Et ideo sicut omnia quæ infra terminos imperii sunt, subjecta esse noscuntur imperio, sic quæ infra terminos regni, regno. Et sicut imperator supra totum imperium suum habet leges condere, addere eis, aut demere: sic et rex Franciæ aut omnino leges imperatoris repellere aut quamlibet placuerit permutare, aut illis a toto regno suo præscriptis et abolitis, novas si placuerit promulgare. Alioquin si aliquid novi, ut sæpe accidit, visum fuerit statuendum, si rex non posset hoc qui est summus: tunc nullus poterit. Quia ultra eum non est superior ullus. Et ideo domine clerice, linguam vestram coercete et agnoscite regem legibus, consuetudinibus, et privilegiis vestris et libertatibus datis, regia potestate præ.esse, posse addere, posse minuere quælibit, æquitate et ratione consultis, aut cum suis proceribus, sicut visum fuerit, temperare."

Cf. for a critical discussion of the date, &c., of this work, R. Scholz, 'Die Publizistik zur Zeit Philipps des Schönen,' &c.

The second is John of Paris, whose tract on the Royal and Papal power was written probably in 1302 or 1303, also in relation to the conflict between Boniface VIII. and Philip the Fair. John of Paris was a determined advocate of the position of Philip, and a penetrating critic of the papal claims. He maintains stoutly that the royal power was in no sense derived from the papal, but from God and from the people who had elected the king or his family.[1] To maintain that it was the Pope who gave laws to princes, and that the prince could not establish his laws unless they were sanctioned by the Pope, was really to destroy the "regimen regale et politicum"; and he goes on to make the distinction between the State where the ruler governs according to the laws which he had made, and that which is governed not according to the will (arbitrium) of the ruler, but according to laws which the citizens or others had established. The first government is called regalis, the second "civilis vel politicus."[2]

John of Paris does not in this place express any preference for the one or the other, but a little later, in a passage probably founded upon St Thomas Aquinas, which we shall consider in the next chapter, he says that in his opinion the best form of government was that in which all the members of the community have their share. Such a form of government, he says, is the best security for the peace of the people, and all men love and maintain it. He ingeniously argues that this was the form of government which God instituted for the Hebrews when Moses or Joshua occupied the position of a king, and seventy-two elders were appointed under them as an aristocracy of virtue, while these seventy-two were elected by the people and from the people, thus representing the principle of democracy. It is a mixed government of this kind which he considered to be the best, for in this constitution all would have some part.[1]

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[1] John of Paris, 'Tractatus de Potestate Regia et Papali,' 11: "Ergo potestas regia nec secundum se, nec quantum ad executionem, est a papa: sed est a Deo, et a populo regem eligente in persona vel domo."

For a full discussion of this work and its date, cf. R. Scholz, *op. cit.*

[2] Id. id., 18: "Dicere autem ut isti magistri dicunt, quod papa tradit leges principibus, et quod princeps non potest legem aliunde sumere, nisi per papam fuerint approbatæ; est omnino destruere regimen regale et politicum, et incidere in errorem Herodis timentis et putantis Christum regnum destruere terrenum; quia secundum philosophum in I. Politicorum, principatus tunc solum dicitur regalis quando quis præest secundum leges quas ipe instituit. Quum vero præest non secundum arbitrium suum, sed secundum leges quas cives vel alii instituerunt, dicitur principatus civilis vel politicus, et non regalis."

It is clear that if, as is just possible, the author of the 'Disputatio inter Clericum et Militem' thinks of the king as the absolute legislator, John of Paris, like St Thomas Aquinas,[2] prefers a mixed or constitutional government.

We have, then, considered in these two chapters how far the traditional mediæval conceptions of the nature and source of law were continued in the later thirteenth century, and how far other conceptions had begun to appear, and as the subject is of the first importance for political theory, it may be well to state our conclusion in summary form.

We have seen that there was no hesitation about the principle that all positive law must express the principles of justice and "æquitas," and that its authority is always subject to that of the Natural Law. We have also seen that the writers of this century, whether theologians like St Thomas or Civilians and Canonists like Odofridus and Hostiensis, all held that custom was both the original form of law, and continued to have the force of law, and that they were therefore in substantial agreement with the great French and English feudal jurists of the century, like Beaumanoir and Bracton.

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[1] Id. id., 20: "Sed quare ergo, indignatus concessit (Deus) eis regem? Dicendum, quod non ideo, quia regale regimen ei displiceret simpliciter ut malum: sed ideo quia illum populum sibi elegerat ut peculiarem, Deut. vi., et instruxerat eis regimen melius puro regali, saltem illi populo, propter duo. Primum est, quia licet regimen regium, in quo unus simpliciter principatur secundum virtutem, sit melius quolibet alio regimine simplici, ut ostendit philosophus in III. Politicorum: tamen si fiat mixtum cum aristocratia et democratia melius est puro, in quantum in regimine mixto omnes aliquam partem habent in principatu. Per hoc enim servatur pax populi, et omnes talem dominationem amant et custodiunt, ut dicitur in II. Politicorum: et tale erat regimen a Deo optime institutum in populo: quia erat regale, in quantum unus præerat simpliciter omnibus singulariter, ut Moises vel Josue. Erat etiam aliquid de aristocratia, qui est principatus aliquorum optimorum principantium secundum virtutem, in quantum sub illo viro elegebantur 72 Seniores, Deut. i. Erant etiam ibi aliqui de democratia, i. principatu populi, in quantum 72 elegebantur a populo et de toto populo, ut dicitur ibidem: et sic erat optime mixtum in quantum omnes in regimine illo aliquid habebant, sive aliquam partem."

Cf. St Thomas Aquinas, 'Summa Theologica,' i. 2, 105, 1.

[2] Cf. pp. 69, 70.

We have, however, also seen that in the course of the thirteenth century the conception of law as custom was being modified by another—that is, by the conception of law as the expression of a conscious will and determination. There is, as we have pointed out, an evident incoherence in the principles of law as set out even by Bracton and Beaumanoir. Bracton begins with the broad statement that English law was not written but customary, but he goes on to say that, in England, that has the force of law which was defined and approved by the authority of the king, with the counsel and consent of the great men, and the approval of the whole commonwealth; and Beaumanoir, who laid down the general principle that all pleas were determined by custom, and that not only the counts but the king must maintain the custom, also said that the king has power to make laws for the whole kingdom "par tres grant conseil et pur le commun pourfit."[1]

To us it seems evident that there are here two conceptions or principles of law, and we venture to urge that the transition from the one to the other was of far-reaching importance, for we think that it is here that we find the first beginning of the modern theory of sovereignty—that is, the conception that there is in every political society the power of making and unmaking laws, that there is some final authority which knows no legal limits, and from which there is no legal appeal. (We do not, of course, mean that this conception is really adequate to the proper conception of law or sovereignty.)

It is, we think, clear where this conception found its literary source. The passage of Bracton, to which we have referred, seems to us to be an adaptation and modification of the famous phrase of Papinian.[1] It was the Roman jurisprudence with its clear and emphatic doctrine that law was that which the Roman people, or those to whom it gave legislative authority, commands and establishes, which was the literary source of this conception. It is no doubt true that the principle was recognised as early as the ninth century, as we can see from the famous phrase of the Edictum Pistense, "Quoniam lex consensu populi et constitutione regis fit,"[2] and it may reasonably be urged that the mere development of mediæval society and the growing complexity of its institutions would have, in the long-run, compelled men to recognise the necessity of some deliberate legislative process. It is, however, we venture to think, perfectly clear that it was the influence of the revived study of the Roman law, and the interpretation and popularisation of its principles by the Civilians of Bologna, which gave form and expression to the new principle.

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[1] Cf. vol. iii. part i. chap. 3.

We can, indeed, also see the terms under which the new conception was reconciled to the older. In another phrase of Bracton, which we have cited in the fifth chapter,[3] the laws made by the king with the advice and consent of the great men and the common approval, when they have been confirmed by the consent of these who are concerned (utentium) cannot be changed without the consent of those by whose counsel and consent they were made. Laws may, indeed, be made by enactment, but they are confirmed by custom. We see here the significance of that doctrine of Gratian's, that laws have no force unless they are approved by custom.[4] We have pointed out that, while there was much controversy among the Civilians about the principle of the continuance of the legal effect of custom, the great mass of opinion was still clear that, even when laws were made by a definite and legitimate authority, the custom of the people remained supreme, and Gregory IX. recognised this principle as holding in ecclesiastical law.[1]

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[1] 'Digest,' i. 3, 1: "Lex est commune preceptum, virorum prudentium consultum, delictorum quæ sponte vel ignorantia contrahuntur coercitio, communis reipublicæ sponsio."

[2] Cf. vol. i. p. 238.

[3] Cf. p. 51, note 2.

[4] Gratian, Decretum D. 4 (after c. 3). Cf. vol. ii. p. 155.

We have also seen that, so far as law was thought of in the thirteenth century as something deliberately made and promulgated, it was normally held that it was established, not by the prince alone, but by the prince with the counsel and consent of the great men and, in some general sense, the approval of the whole community. This is the principle of legislation which the Middle Ages left to the modern world. This was the principle of the feudal jurisprudence, and was represented in the constitutional practice not only of England, but of Western Europe.

The truth is that the conception of an absolute monarch, the source of law, and superior to all law, was wholly alien to mediæval civilisation. Bracton's famous saying that the king is under God and the law[2] represented the tradition not only of England, but of all Western Europe.[3] So far as the law was not merely the custom of the community, it was the expression of the will and command of the community. This principle was, indeed, admirably expressed by one of the earliest jurists of Bologna, possibly Irnerius himself, when he said that the "universitas"—that is, the people—establishes and interprets the law, for it is its function to care for all its members.[4]

It is, however, also true that in the twelfth and thirteenth centuries we have found the first beginnings for the modern world of another conception of the source of law, that it is the prince or ruler who is the legislator, the fount of law; and there cannot be any doubt as to the origin of this conception. It came from Bologna, from the revived study of the Roman jurisprudence, from the Civilians. It was in this jurisprudence that they found the doctrine that while the Roman people was the ultimate source of all political authority and of all law, it had transferred its authority to the emperor. This conception was, as we have said, wholly alien to the normal principles and practice of the Middle Ages, and we may reasonably conjecture that it was the obvious incoherence between the principles of the ancient empire and the actual constitutional position of the political societies of the Middle Ages which led some of the most famous of the Bologna Jurists to maintain not only that the custom of the people retained its legislative authority, but also that the people could resume that authority which they had delegated to the emperor.[1] We may also conjecture that it was the same feeling which led some very important Civilians to assert that the emperor could only exercise his legitimate authority with the counsel and consent of the Senate.[2]

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[1] Cf. vol. ii. part i. chap. 7; part ii. chap. 8; vol. iii. part i. chap. 3.

[2] Bracton, 'De Legibus et Consuetudinibus,' i. 8, 5.

[3] Cf. vol. iii. part i. chaps 2-4.

[4] Irnerius(?), 'De Æquitate,' 2: "Universitas, id est populus, hoc habet officium, singulis scilicet hominibus quasi membris providere. Hinc descendit hoc ut legem condat, conditam interpretetur et aperiat, quoniam lege prefinitur quod unusquisque sequi vel quid debeat declinare."

Cf. vol. ii. p. 57.

The Bologna Civilians were, however, rather interpreting the constitutional jurisprudence of the Roman Empire than advocating any one form of government for their own time, and it is not till the last years of the thirteenth century that we find a writer who maintained the intrinsic superiority of an absolute monarchy, for that is the position of Egidius Colonna in his treatise, 'De Regimine Principum.' Strangely enough, he does not, at least directly, show any influence of the Roman Law. He distinguishes between what he calls the "regimen politicum," in which the king governs according to the laws made by the citizens, and the "regimen regale" in which he governs according to his own will (arbitrium) and the laws which he has himself made. He contradicts, however, not only the mediæval tradition, but also the authority of Aristotle in order to maintain that it is the "regimen regale" which is the best.

We hope in the next volume to consider something of the history of the development of the theory of the absolute monarchy from the fourteenth century to the sixteenth.

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[1] Cf. vol. ii. pp. 59-67, and this vol., p. 66.

[2] Cf. vol. ii. pp. 67-70.

Here we have only to say that this conception was, in the thirteenth century, isolated and merely academic. As we have already said, it was in the twelfth and thirteenth centuries that the modern theory of sovereignty began to appear, not merely as a theory, but as a practical conception in politics; but it was the theory of the sovereignty not of the prince but of the community.

CHAPTER VII.

THE SOURCE AND LIMITATIONS OF THE AUTHORITY OF THE RULER.

WE have endeavoured in the last chapters to trace the sources and the nature of the law of the State as they appear both in the theory and practice of the thirteenth century. We must now turn to the different but related question of the source and nature of the authority of the prince or ruler. We have in previous volumes endeavoured to trace the history of these conceptions in the earlier Middle Ages; we must now consider how far they remained the same in the thirteenth century, and how far they were developed or modified.

We have in previous volumes considered the nature of the mediæval traditions with regard to the immediate source of the authority of the ruler,[1] and have pointed out how complex these were. The divine appointment, the hereditary succession within some one family, the election or recognition or confirmation by the community—all these elements have to be recognised as having had their place in the conception of succession to political authority. It may, we think, however, be reasonably said that, taking Western Europe as a whole, in the Empire the principle of election established itself with a strong preference for a member of what was considered the imperial family, while in England, France, and Spain the succession normally became hereditary within one family. This does not, however, mean that it was hereditary in the later sense, without reference to the capacity or competence of the person who claimed the succession.

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[1] Cf. vol. i. p. 240 *seq.*; vol. iii. p. 150 *seq.*

The distinction between the elective and the hereditary principle is sharply drawn by Andrew of Isernia, in his commentary on the constitutions of the kingdom of Naples. He is maintaining that the king in his kingdom is equal to the emperor in his empire, and adds, the empire is "personal" because it is by election, while the kingdom may be called "real," for it is hereditary.[1] Jordan of Osnabrück, in an oddly unhistorical passage, says that Charles the Great, with the consent and command of the Pope, had established the rule that the emperor should be elected by the German princes, while the kingdom of the French should be independent and hereditary.[2] Frederic II., in his encyclical letter protesting against his deposition by Innocent IV., refers to the German princes as those upon whom his position depended,[3] while Rudolph of Halsburg naturally recognised the rights of those German princes who elected the Roman king.[4]

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[1] Andreas de Isernia, 'Peregrina,' fol. 7 v.: "Sed imperium est personale quia per electionem . . . regnum reale ut ita loquar, quia hereditarium . . . unde filius regis est rex."

[2] Jordan of Osnabrück, 'De Prerogativa Romani Imperii,' v.: "Sciendum est igitur, quod sanctus Karolus Magnus Imperator de consensu et mandato Romani Pontificis, ordinatione sibi divinitus inspirata, instituit et precepit, ut imperium Romanum apud electionem canonicam principum Germanorum in perpetuum resideret. Non enim convenit sanctuarium Dei, id est regnum Ecclesiæ jure hereditario possideri. . . . Porro quia ipse Karolus rex Francorum extitit, et illud regnum ad eum fuerat ex successione devolutum, impium fuit et indecens, quod ipse suos heredes dignitate regia penitus denudasset. Statuit igitur . . . ut Francigene cum quadam regni Francorum portione regem haberent, de regali semine jure hereditario successurum, qui in temporalibus superiorem non recognosceret, cui videlicet tamquam imperatoris posteritas ad homagium vel aliquid obsequium teneretur."

[3] M. G. H., 'Constitutiones,' vol. ii. 262, 9: "per quam ridicolose subicitur legi, qui legibus omnibus imperialiter est solutus . . . 11. Advertat igitur prudentia tua, si predicta sententia nulla ipso jure, nullus ipso jure processus . . . debeat observari, quam nulla nostrorum Germaniæ principum, a quibus assumptio status et depressio nostra dependit, presentia vel concilia firmaverunt."

[4] M. G. H., 'Constitutiones,' vol. iii. 389, 1: "Romani moderator imperii ab observancia legis solutus legum civilium nexibus, quia legum conditor non constringitur, et tamen legis naturæ dominium, quod ubique et in omnibus principatur, necessario profitetur . . . 2. De libero et expresso consensu imperii principum jus in electione regis Romani ex longa consuetudine tenencium, principatus sive

The 'Sachsenspiegel,' as we pointed out in the third volume, asserts that the king is elected by the Germans, and, indeed, in another place lays down the sweeping doctrine that all temporal authority is divided from election.[1]

The recognition of the hereditary principle did not, however, mean that the authority of the ruler was not ultimately derived from the community. Egidius Colonna, in his tract on the resignation of Pope Celestine, maintains that it is according to nature that men should be set over men, and that the wise men should be set over the others; but he adds, this must be completed by the consent of men, and by the same consent of men the ruler may resign or be deposed.[2] The position of Egidius is the more noticeable, because, as we have seen, he preferred an absolute to a constitutional monarchy, and he thinks of government as being the natural consequence of difference in wisdom and capacity.

James of Viterbo, in a work written about 1301, with which we shall have to deal later, in several places states that the royal authority is given to men either by the ordinance and common consent of the community, or along with this by the special appointment of God, or by those who stand in the place of God.[3]

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ducatus Austriæ, Stirie, Carniole et Marchie . . . illustribus Alberto et Rudolfo filiis nostris carissimis . . . concessimus in feodum."

[1] 'Sachsenspiegel,' i. 55, 1: "Al werlik gerichte hevet begin von Kore."

'Schwabenspiegel,' 71, 1. Cf. vol. iii. p. 153.

[2] 'De Renunciatione Papæ,' xvi. 1: "Et sicut, per assensum hominum perficitur et completur, ut quis aliis præficiatur, sic per consensum hominum contrario modo factum fieri potest, quod prefectus cedat, vel quod etiam deponatur."

[3] James of Viterbo, 'De Regimine Christiano,' chap. iii. p. 179: "Potestas autem regia, quæ est ex jure humano, communicata est quibusdam hominibus qui sunt instituti rectores aliorum, vel ex ordinatione solum et commune consensu alicujus communitatis hominum, sicut in populis gentium, vel interveniente cum hoc speciali ordinatione sen concessione divina, sicut in populo Israel."

Id. id. id., p. 196: "Regiam quoque potestatem terrenam quidam recte adepti sunt, sive per electionem et communem consensum multitudinis, sive per divinam ordinationem: quidam autem indebite per violentiam."

Id. id., chap. x. p. 303: "Recte quidem pervenit aliquis ad regimen quando, vel ex condicto et communi consensu multitudinis, perficitur, vel, preter hoc ex ipius Dei speciali ordina-

We have already cited the words of John of Paris, in which he indignantly denies that the authority of the king is derived from the Pope, and maintains that it comes from God, and from the people who elected him in person or in his family.[1] John is plainly concerned to assert that the royal authority comes from the people, but he makes room for the hereditary principle, the people may have chosen a particular family in which the succession should continue by inheritance.

St Thomas Aquinas does not seem anywhere to discuss in general terms the immediate source of political authority, but it is significant that he lays great stress on the representative character of princes. They are, he says, to be held in honour, even though they are evil, because they bear the person of God and of the community.[2] He does not directly deal with the question how they come to bear this representative character, but in the 'De Regimine Principum,' where he considers the question what is to be done if the king should become a tyrant, he seems to recognise only two methods of creating political authority, the one where the people has the right to make its own arrangements for a king, the other where the right belongs to some superior.[3]

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tione, ut in populo Israelitico factum est, seu ex institutione illorum qui vicem Dei gerunt, ut in populo Christiano debet esse. Perverse autem pervenit quis ad regimen quum ex libidine dominandi, vi aut dolo vel alio indebito modo, sibi usurpat regiminis potestatem. Contingit tamen aliquem a principio indebite assequi potestatem, qui tamen postea verus rector efficitur, vel per consensum subditorum vel per auctoritatem superioris."

[1] John of Paris, 'Tractatus de Potestate Regia et Papali,' xi.: "Ergo potestas regia nec secundum se, nec quantum ad executionem, est a papa: sed est a Deo, et a populo regem eligente in persona vel in domo."

[2] St Thomas Aquinas, 'Summa Theologica,' 2. 2 63, 3: "Sciendum tamen quod aliquis potest honorari non solum propter virtutem proprium, sed etiam propter virtutem alterius; sicut principes et prelati honorantur, etiamsi sint mali, in quantum gerunt personam Dei, et communitatis cui præficiuntur."

Cf. 2. 2, 57, 2: "Princeps, qui curam populi habet et ejus personam gerit."

[3] Id., 'De Regimine Principum,' i. 1: "Primo quidem si ad jus multitudinis alicujus pertineat sibi providere de rege, non injuste ab eadem rex institutus potest destitui, vel refrenari ejus potestas, si potestate regia tyrannice abutatur. . . . Si vero ad jus alicujus superioris pertineat multitudini providere de rege, expectandum est ab eo remedium contra tyranni nequitiam."

He was, no doubt, thinking specially of possible cases under the feudal system, probably of feudatories of the Papacy.

The general mediæval conception seems to us to be admirably expressed in the words of the speech which Matthew Paris puts into the mouth of Archbishop Hubert Walter at the coronation of King John. How far it represents anything which Hubert Walter really said does not for our purpose greatly matter; it is quite sufficient that Matthew Paris thought of it as representing what he thought appropriate to the occasion. In this speech we see the conception of the elective principle blended with the hereditary. No one, Matthew Paris represents the archbishop as saying, had the right to succeed to the kingdom, unless he had been elected by the "universitas" regni, but if one of the royal race were pre-eminent, the choice would the more readily fall upon him, and they had therefore unanimously elected John.[1]

We shall, however, recognise more clearly the normal mediæval conception of the relation of the authority of the prince to the community, when we now consider the nature and limits of that authority. We have, in the third chapter, dealt with the significance of the principle that political authority was legitimate only when it was directed to justice and the common good; we must now deal with this in greater detail.

We cannot do better than begin by observing the careful statement of the general principles of the nature and limits of political authority by St Thomas Aquinas. He is clear and emphatic in his statement of the doctrine that the authority of the ruler is derived from the Divine order, that obedience to it is required of Christian men, and that disobedience is a mortal sin;[1] but he is equally clear and emphatic that the Christian man is only bound to obey as far as the order of justice requires; subjects are not bound to obey a usurper or an authority which commands unjust things.[2]

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[1] Matthew Paris, 'Chronica Maiora,' vol. ii. pp. 454, 455: "Archiepiscopus stans in medio omnium dixit, audite universi. Noverit discretio vestra quod nullus prævia ratione alii succedere habet in regnum, nisi ab universitate regni unanimiter, invocata sancti Spiritus gratia, electus, et secundum morum suorum eminentiam præelectus. . . . Verum si quis ex stirpe regis defuncti aliis præpolleret, pronius et promptius est in electionem ejus consentiendum. Haec idcirco dicimus pro inclito comite Joanne . . . quem nos, invocata spiritus Sancti gratia, ratione tam meritorum quam sanguinis regis unanimiter elegimus universi."

Cf. Stubb's 'Const. Hist.,' vol. i. chap. 12, par. 151.

In St Thomas' commentary on the 'Sentences' of Peter Lombard (one of his earlier works), he sets out more precisely the cases when the subject is not bound to obey. An authority may not be from God in two ways, from the mode of acquiring the authority, or from the use made of it. The defect in the mode of acquisition may be due to some personal defect, so that he is unworthy of it; this does not in itself hinder the right of authority, but it may be due to the fact that the authority has been acquired by violence or by some other unlawful method. This does completely destroy the validity of the authority, and unless it is afterwards sanctioned by the consent of the subjects, or by the authority of some superior, it may properly be repudiated. The defect arising from the use made of authority may again be of two kinds: if it is used to compel men to sin, the subject is bound to disobey; if it is used to compel men to render obedience in some matters to which it does not extend, as, for instance, if a lord endeavour to exact payments which the slave is not bound to give, then the subject is not under obligation either to obey or to disobey.[3]

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[1] St Thomas Aquinas, 'Summa Theologica,' 2. 2, 105, 1: "In preceptis autem divinis continetur quod etiam superioribus obediatur; et ideo etiam inobedientia, qua quis inobediens est preceptis superiorum, est peccatum mortale, quasi divinæ dilectioni contrarium, secundum illud ad Rom. xiii. 'Qui potestati resistit, Dei ordinationi resistit'; contrariatur insuper dilectioni proximi, in quantum superiori proximo subtrahit obedientiam, quam ei debet."

[2] Id. id., 2. 2, 104, 6: "Ad tertium ergo dicendum quod principibus secularibus intantum homo obedire tenetur, in quantum ordo justitiæ requirit; et ideo, si non habeant justum principatum, sed usurpatum, vel si injusta præcipiant, non tenentur eis subditi obedire, nisi forte per accidens, propter vitandum scandalum vel periculum."

[3] Id., Comm. on the 'Sentences,' ii. D. 44, 2, 2: "Dictum est autem quod prelatio potest a Deo non esse dupliciter, vel quantum ad modum acquirendi prælationem, vel quantum ad usum prælationis. Quantum ad primum contingit dupliciter: aut propter defectum personæ, quia in-

In order, however, to consider the whole significance of St Thomas' judgment, we must take account of his treatment of tyranny and the tyrant. We may begin by again observing his treatment of "sedition" in a passage which we have already cited. "Sedition," he says, is clearly a mortal sin, for it is directed against the unity of the community, which is founded upon a common system of law and the common good, and therefore sedition is opposed to justice and the common good. On the other hand, St Thomas is equally clear in asserting that the rule of a tyrant is not just, since it is not directed to the common good, but to the private advantage of the ruler, and therefore resistance to such an authority is not sedition, unless it is so disorderly as to cause more harm to the people than the rule of the tyrant.[1]

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dignus est, aut propter defectum in ipso modo acquerendi, quia scilicet per violentiam, vel per simoniam, vel aliquo illicito modo acquirit. Ex primo defectu non impeditur quin jus prælationis ei acquiratur: et quoniam prælatio secundum suam formam semper a Deo est (quod debitum obedientiæ causat) ideo talibus prælatis, quamvis indignis, obedire tenentur subdite. Sed secundus defectus impedit jus prælationis: qui enim per violentiam dominium surripit, non efficitur vere prælatus, vel dominus: et ideo cum facultas adest, potest aliquis tale dominium repellere, nisi forte post modum dominus verus effectus sit vel per consensum subditorum, vel per auctoritatem superioris. Abusus autem prælationis potest esse dupliciter: vel ex eo quod est præceptum a prælato contrarium ejus ad quod prælatio ordinata est, ut si præcipiat actum peccati contrarium virtuti, ad quem inducendam et conservandam prælatio ordinatur; et tunc aliquis prælato non solum non tenetur obedire, sed etiam tenetur non obedire, sicut et sancti martyres mortem passi sunt, ne impiis jussis tyrannorum obedirent: vel quia cogunt ad hoc quod ordo prælationis non se extendit, ut si dominus exigat tributa quæ servus non tenetur dare, vel aliquid hujusmodi; et tunc subditus non tenetur obedire, nec etiam tenetur non obedire."

[1] Id., 'Summa Theologica,' 2. 2, 42, 2: "Respondeo dicendum, quod sicut dictum est seditio opponitur unitati multitudinis, id est populi civitatis vel regni: dicit autem Aug. ii. De Civ. Dei quod populum determinant sapientes, non omnem cœtum multitudinis, sed cœtum juris consensu, et utilitatis communione sociatum; unde manifestum est, unitatem, cui opponitur seditio, esse unitatem juris et communis utilitatis; manifestum est ergo, quod seditio opponitur et justitiæ et communi bono; et ideo ex suo genere est peccatum mortale; et tanto gravius, quanto bonum commune, quod impugnatur per seditionem est majus, quam bonum privatum, quod impugnatur per rixam. . . . Ad tertium dicendum, quod regimen tyrannicum non est justum, quia non ordinatur ad bonum commune, sed ad bonum privatum regentis, ut patet per Phil. in 3 Polit. et in 8 Ethic.; et ideo perturbatio hujus regiminis non habet rationem seditionis: nisi

In the same passage of that early work on the sentences of Peter Lombard, to which we have referred above, St Thomas seems to go so far as to give his approval to the principle that it is lawful to murder the tyrant; at least he cites, without expressing his disapproval, a passage from Cicero, in which, as St Thomas understands him, he had defended this in the case when the tyrant had obtained his authority by violence against the will of the subjects, and when there was no superior to whom they could have recourse.[1] We have seen in a former volume that this was the opinion of John of Salisbury.[2]

It is, however, clear that this was not the mature judgment of St Thomas. It is in his treatise, 'De Regimine Principum,' that he deals most precisely with the whole question of the relation of the community to an unjust or tyrannical ruler. In this treatise he explains in careful and measured terms that, in his opinion, the best form of government was that of a monarch devoted to the common good, because it tended most to the unity of the society, while the worst form of government was a tyranny, or the government of one man who pursues his own advantage.[3] It is, however, necessary to make careful provision that the monarchy should not become a tyranny, and for this purpose it is necessary, first, that the person appointed to be king should be of such a character

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forte quando sic inordinate perturbatur tyranni regimen, quod multitudo subjecta majus detrimentum patitur ex perturbatione consequente, quam ex tyranni regimine: magis autem tyrannus seditiosus est, qui in populo sibi subjecto discordias et seditiones nutrit, ut tutius dominari possit, hoc enim tyrannicum est quum sit ad bonum proprium presidentis, cum multitudinis nocumento."

[1] Id., Commentary on the 'Sentences,' ii. D. 44, 2, 2, 5: "Nullus tenetur ei obedire, quem licite, immo laudabiliter potest interficere. Sed Tullius in libro De Officiis (i. 26) salvat eos qui Julium Cæsarem interfecerunt, quamvis amicum et familiarem qui quasi tyrannus jura imperii superaverat. Ergo talibus nullus tenetur obedire. . . . Ad quintum dicendum, quod Tullius loquitur in caso illo quando aliquis dominium sibi per violentiam surripit, nolentibus subditis, vel etiam ad consensum coactis, et quando non est recursus ad superiorem, per quem judicium de invasore possit fieri: tunc enim qui ad liberationem patriæ tyrannum occidit, laudatur et premium accipit."

[2] Cf. vol. iii. pp. 142-146.

[3] 'De Regimine Principum,' i. 2 and 3.

that it would not be probable that he should become a tyrant; and secondly, that his authority should be so restrained (temperatur) that he could not easily fall into tyranny. St Thomas evidently intended to deal with the matter further in this treatise; unhappily he never completed the work.[1]

He has however fortunately, in the 'Summa Theologica,' indicated very clearly what he thought about the best form of constitution, and we may conjecture that, if he had completed the 'De Regimine,' it would have been under similar terms that he would have explained what he meant when, in the passage just cited, he says that the power of the king should be restrained. In the 'Summa Theologica' he gives as his own opinion that in a good government it is in the first place important that all should have some share in authority. This tends to the peace of the people, for all men love and maintain such an order; in the second place, the best constitution is that when one man is set over all on account of his virtue, and others govern under him also on account of their virtue. Such a constitution belongs to all, for the rulers can be elected from all, and are elected by all. Such a mixed constitution combines the character of a kingdom, for it has one head; of an aristocracy, for many have their part in authority on account of their virtue; and of a democracy—that is, of the authority of the people, for the rulers can be elected from the people, and their election belongs to the people. This, he adds, was the form of government instituted by the Divine law, for Moses and his successors ruled as kings, while the council of the elders represented the aristocracy, and as these were elected from and by the whole people, they also represented the principle of democracy.[1]

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[1] Id. id., i. 6: "Quia ergo unius regimen preeligendum est, quod est optimum, et contingit ipsum in tyrannidem converti, quod est pessimum, ut ex dictis patet; laborandum est diligenti studio, ut sic multitudini provideatur de rege ut non incidat in tyrannum. Primum autem est necessarium, ut talis conditionis homo ab illis ad quos hoc spectat officium promoveatur in regem, quod non sit probabile in tyrannidem declinare. . . . Deinde sic disponenda est regum gubernatio, ut regi jam instituto tyrannidis subtrahatur occasio. Simul etiam sic ejus temperatur potestas ut in tyrannidem de facili declinare non possit. Quæ quidem, ut fiant, in sequentibus considerandum erit."

This passage indicates very clearly what it was that St Thomas meant by a kingdom in which the authority of the king should be moderated or restrained; St Thomas clearly preferred a mixed or constitutional state. It is noticeable that, although we cannot say that he anywhere shows any special acquaintance with the actual constitutional movements of his time, in his treatment of the representative principle and the elective method of creating this representation, he comes very near to that constitutional development of which we shall have to speak in a later chapter.

The best form of government, then, in the judgment of St Thomas is a constitutional monarchy, and it is by means of the restraints belonging to such a constitution that the king may be prevented from becoming a tyrant. It still remains to consider what St Thomas thought should be done if the king, in spite of all precautions, should become a tyrant. It is this question with which he deals in detail in the sixth chapter of the 'De Regimine Principum.' In the first place, he urges that unless the tyranny is very grievous, it may be better to endure it for a time, lest matters should only be made worse. Some, he says, have contended that if the tyranny is intolerable, it belongs to the virtue of brave men to slay the tyrant, and to run the risk of death in order to set the people free, but this is not in accordance with the apostolic teaching; St Peter said that we should be subject not only to the good, but also to the forward rulers, and St Thomas points out that the Christians did not resist the tyrannical persecutions of the Roman emperors. It would be dangerous not only to the rulers but to the people if it were to be determined by private judgment whether a ruler should be killed, for wicked men find the rule of a king as burdensome to them as that of a tyrant.

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[1] Id., 'Summa Theologica,' 1. 2, 105, 1: "Respondeo dicendum, quod circa bonam ordinationem principum in aliqua civitate vel gente, duo sunt attendenda. Quorum unum est, ut omnes aliquam partem habeant in principatu; per hoc enim conservatur pax populi, et omnes talem ordinationem amant et custodiunt, ut dicitur in II. Polit.; aliud est, quod attenditur secundum speciem regiminis, vel ordinationis principatuum: cujus quum sint diversæ species, ut Philos. tradit in III. Polit.; præcipuæ tamen est unum regimen in quo unus principatur secundum virtutem; et aristocratia, id est potestas optimorum, in qua aliqui pauci principantur secundum virtutem; unde optima ordinatio principum est in aliqua civitate, vel regno, in quo unus præficitur secundum virtutem, qui omnibus præsit; et sub ipso sunt aliqui principantes secundum virtutem; et tamen talis principatus ad omnes pertinet; tum quia ex omnibus eligi possunt; tum quia etiam ab omnibus eliguntur. Talis vero est omnis politia bene commixta ex regno, in quantum unus præest, et aristocratia, in quantum multi principantur secundum virtutem, et ex democratia, id est, potestate populi, in quantum ex popularibus possunt eligi principes; et ad populum pertinet electio principum; et hoc fuit institutum secundum legem divinam. Nam Moyses, et ejus successores gubernabant populum, quasi singulariter omnibus principantes, quod est quædam species regni. Eligebantur autem septuaginta duo seniores secundum virtutem: dicitur enim Deut. i. 'Tuli de vestris tribubus viros sapientes et nobiles, et constitui eos principes': et hoc erat aristocraticum: sed democraticum erat, quod isti de omni populo eligebantur: dicitur enim Exod. 18: 'Provide de omni plebe viros sapientes,' &c., et etiam quod populus eos eligebat; unde dicitur Deut. i.: 'Date ex vobis viros sapientes'; unde patet quod optima fuit ordinatio principum quam lex instituit."

St Thomas, therefore, contends that the king who has become a tyrant should be dealt with by public authority. If it belongs to the lawful right (jus) of the people to appoint the king, it is right and just that the king whom they have created, if he has tyrannically abused the royal power, should be deposed by them, or that they should limit his power. The people are not violating their faith in deposing the tyrant, even if they had conferred upon him a perpetual authority, for he has deserved that the contract (or agreement, pactum) which was made to him by his subjects should not be kept, inasmuch as he had not kept his faith in the government of the people. St Thomas cites the expulsion of the Tarquins and the destruction of Domitian by the Roman Senate as examples of such constitutional action. If, however, the right of appointing the king belongs to some superior authority, recourse should be made to it. If there is no human help against the tyrant, men must turn to God, who is the king of all, and their helper in tribulation.[1] It is thus clear what are the general principles of St Thomas with regard to the nature of the authority of the ruler, and the limitations upon that authority; it is, indeed, clear that his conception of a good constitution is that of a monarchy limited by the authority of an aristocracy elected by and representative of the community.[1]

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[1] 'De Regimine Principum,' i. 6: "Demum vero curandum est, si rex in tyrannidem diverteret, qualiter possit occurri. Et quidem si non fuerit excessus tyrannidis, utilius est remissam tyrannidem tolerare ad tempus,

We can now consider this principle of the limitation of the royal authority in other writers. It may be well to begin by warning our readers against the misconception which might arise from the occasional use, especially by the Civilians or other writers who were familiar with the Roman Law, of the phrase that the emperor or prince is "legibus solutus." Civilians like Odofridus and Boncompagni cite the words, but add those of the rescript of Theodosius and Valutinian ('Cod.,' i. 14, 4) that it is right that the emperor should acknowledge that he is bound by the laws,[2] and Vincent of Beauvais, in words which are plainly reminiscent of John of Salisbury, says that the prince is "legis nexibus . . . absolutus," not

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quam contra tyrannum agendo multis implicare periculis, quæ sunt graviora ipsa tyrannide. . . . Et si sit intolerabilis excessus tyrannidis, quibusdam visum fuit, ut ad fortium virorum virtutem pertineat tyrannum interimere, seque pro liberatione multitudinis exponere periculis mortis: cujus rei exemplum etiam in vetere Testamento habetur. . . . Sed hoc Apostolicæ doctrinæ non congruit. Docet enim nos Petrus, non bonis tantum et modestis, verum etiam discolis dominis reverenter subditos esse (1 Pet. ii. 18). . . . Esset autem hoc multitudini periculosum et ejus rectoribus, si privata presumptione aliqui attentarent presidentium necem, etiam tyrannorum. . . . Malis autem solet esset grave dominium non minus regum quam tyrannorum. . . . Videtur autem magis contra tyrannorum sævitiam non privata presumptione aliquorum, sed auctoritate pubica procedendum. Primo quidem, si ad jus multitudinis alicujus pertineat, sibi providere de rege, non injuste ab eadem, rex institutus potest destitui (destrui), vel refrenari ejus potestas si potestate regia tyrannice abutatur. Nec putanda est talis multitudo infideliter agere tyrannum destituens, etiam si eidem in perpetuo se ante subjecerat: quia hoc ipse meruit, in multitudinis regimine se non fideliter gerens, ut exigit regis officium, quod ei pactum a subditis non reservetur . . . Si vero ad jus alicujus superioris pertineat multitudini providere de rege, expectandum est ab eo remedium contra tyranni nequitiam . . . . Quod si omnino contra tyrannum auxilium humanum habere non potest, recurrendum est ad regem omnium Deum, qui est adjutor in opportunitatibus in tribulatione."

[1] See Appendix, I.

[2] Odofridus, 'Comm. on Dig.,' i. 3, 31; Boncompagni, 'Rhetorica Novissima,' ix. 5.

because he can act unjustly, but because he should be a man of such a character that he pursues equity not from the fear of punishment, but from love of justice, for in public matters he may not desire anything but that which law or equity and the public good requires.[1]

We may compare the treatment of the relation of the king to the law, as it is expressed in the Spanish law-books of Alfonso X. He describes the office of the king in the highest terms; he is the vicar of God to keep his people in justice and truth in temporal matters,[2] but he also maintains that he is specially bound to obey the laws, and this for three reasons: the first, because it is by the laws that he is honoured and protected; the second, because it is the laws which help him to fulfil justice and right; the third, because it is the king who made the laws, and it is right (derecho) that those who made the laws should be the first to obey them.[3] Alfonso does not hesitate to say in another place that not only the king who has obtained his kingdom by force, fraud, or treason, but even the king who has obtained his authority by lawful means, if he misuses his power and turns his lordship from right to wrong, is a tyrant.[1]

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[1] Vincent of Beauvais, 'Speculum,' ii. 7, 23: "Princeps autem legis nexibus dicitur absolutus, non quia iniqua ei liceant, sed quia is debet esse, qui non timore pœnæ sed amore justitiæ equitatem colat. Nam in negociis publicis nil ei velle licet, nisi quod lex aut æquitas persuadet, aut ratio communis utilitatis inducit."

Cf. John of Salisbury, 'Policraticus,' iv. 2.

Cf. vol. iii. p. 139. (Notice, however, that the section in Vincent begins with a reference to "Laurentius Mediolanensis Episcopus," writing about "Publici Exactores.")

[2] 'Siete Partidas,' ii. 1, 5: "Vicarios de Dios son los reyes cada uno en su regno puestos sobre las gentes para mantenerlas en justicia et en verdad quanto en lo temporal, bien asi como el emperador en su emperio . . . et los santos dixeron que el rey es señor puesto en la tierra en lugar de Dios para complir la justicia et dar a cada uno su derecho."

Cf. 'Especulo,' ii. 1, 5.

[3] 'Especulo,' i. 1, 9: "Todos los omes deven seer tenidos de obedecer las leyes, et mayormiente los reyes por estas razones. La primera porque son por las leyes honrados et guardados. La segunda porque los ayudan a complir justicia et derecho, lo que ellos son tenudos de fazer. La tercera porque ellos son fazedores dellas, et es derecho que pues que las ellos fazen, que ellas las obedescan primeriamente. Cf. 'Siete Partidas,' 1, 1, 16.

"Guardar debe el rey las leyes como á su fechura et á su honra, porque recibe poder et razon para facer justicia. Ca si él non las guardase, vernia contra su fecho, et desatarie el bien, et venirle hie ende dos daños: el primero en desatar tan buena cosa como esta que hobiese fecho, el otro que se tornaria en daño communalmente de todo el pueblo. Et por este lugar avilesceria á si mesmo, et mostrarse hie á par de mal seso, et serie su mandamiento et sus leyes menos preciadas."

The truth is that the conception that the prince might or should govern according to his own will or pleasure was a purely academic conception, and had no relation to the principles of government in the Middle Ages, at least till the close of the thirteenth century. The normal conception of that time was really that of Bracton, to which we have so frequently referred, that the king was under the law as well as under God.[2] Whatever may be the explanation of the development of the theory of absolute monarchy in the centuries from the sixteenth to the eighteenth, this theory was wholly alien to the Middle Ages.

It was alien, as we think, to the whole constitutional tradition of the earlier Middle Ages,[3] but even if this had not been the case, it is obvious that the development of feudalism in the centuries from the tenth to the thirteenth would have rendered it not merely impossible, but to the men of that time unintelligible. For the fundamental character of feudalism is to be found in the principle that it was a system of mutual and fixed obligations. The obligations of the lord, and the mediæval king was a lord, whatever else he might be, were not the same in all respects as those of the vassal, but they were equally fixed and binding; the rights also of the feudal lord were not the same in all respects as those of the vassal, but they were just as clearly and definitely limited as those of the vassal. We have dealt with this subject at length in the third volume of the work,[1] and only add here a few further illustrations.

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[1] 'Siete Partidas,' ii. 1, 10: "Tirano tanto quiere decir como señor cruel que es apoderado en algun regno ó tierra por fuerza, ó por engaño ó por traicion: et estos tales son de tal natura, que despues que son bien apoderados en la tierra, aman mas de facer su pro, maguer sea á daño de la tierra, que la pro comunal de todos, porque siempre viven á mala sospecha de la perder. . . . Otro sidecimos que maguer alguno hobiese ganado señorio de regno por alguna de las derechas razones que deximos en las leyes ante desta, que si él usase mal de su poderio en las maneras que dixiemos en esta ley, quel puedan decir las gentes tirano, ca tórnase el señorio que era derecho en torticero, asi como dixo Aristótiles en el libro que fabla del regimento de las cibdades et de los regnos."

[2] Cf. vol. iii. p. 38.

[3] Cf. vol. i. chap. 19.

Martin Silimani, one of the Bologna Jurists of the later thirteenth century, who, like some other Civilians, also wrote on feudal law, discusses in one place the conditions under which a vassal would be liberated from the obligations of fealty. If a lord were to commit an act of "fellonia" of such a kind that, if the vassal were to commit it he would lose his fief, the lord would lose his property. Again, if the lord were to require of the vassal something dishonourable or base or unlawful, the vassal would be freed from his obedience.[2]

Andrew of Isernia, as we have pointed out, in his commentary on the Neapolitan Constitutions, clearly holds that this principle applied to the king and his vassals just as much as to other cases. If the king attempts unjustly to seize and ill-treat a vassal, the vassal is not bound to obey the king's summons, for in such action the king is no king, and the lord loses his property in the fief, just as the vassal would lose his fief if he did not render justice to his lord.[3]

Alfonso X. sets out the same principles of the feudal relations in the 'Siete Partidas'; the mutual obligations of lord and vassal, and also the results of a violation, on either side, of these obligations. The vassal owes to his lord love, honour, protection, and loyal service, but the lord has the same kind of obligations to his vassal. The vassal will lose his fief if he fails to carry out his obligations to his lord, if he kills his lord's brother, or son, or grandson, or seduces his wife, or daughter, or daughter-in-law, but also, if the lord does any of these things to his vassal, the lord will lose his property in the fief.[1] The 'Siete Partidas' distinguishes, indeed, between the feudal relations and those which it describes under the term "naturaleza"—that is, as we understand it, the natural relations in which a man stands to the lord of the land in which he lives,—but it emphatically asserts that this relation also is terminated by the wrongdoing either of the "natural" (the natural subject) or by that of the lord of the land.[2]

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[1] Cf. vol. iii. part i. chaps. 2 and 4.

[2] Martin Silimani, 'De Feudis,' fol. 9. Rub. "In quibus casibus vasallus a fidelitate domini liberetur": "Item si dominus commisit felloniam contra vassallum, talem qualem si vassallus commisisset, feodum perderet, tunc dominus proprietatem rei perdet. . . . Item liberatur ab obedientia domini, ut ei obedire non cogatur, ut si jubeat vassallo aliquid inhonestum . . . vel turpe, vel illicitum."

[3] Andreas of Isernia, 'Peregrina,' fol. 38, v.: "Unde et si constet quod vassallum velit rex contra justitiam capere et male tractare, dixerat enim ei hoc rex notificando suam voluntatem per ea quod dicuntur in glo. . . . iuste timebit ire timens capi de facto et occidi . . . tunc non est inobediens regi, quia in tali actu non est rex. . . . Talis actus et tale delictum regium, omnem honorem excludit. Item et tunc dominus privatur proprietate vasalli, sicut vasallus feudo, quum non facit justitiam domino."

The rights of the mediæval prince were then fixed rights, limited and restrained by the law, and it is from this point of view that we shall best understand the origin and significance of the principle of the limitation of the rights of the king over the property of the subject, and the constitutional principle of the limitation of his rights of taxation.

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[1] 'Siete Partidas,' iv. 25, 6: "Debdos muy grandes son los que han los vasallos con sus señores; ca débenlos amar, et honrar, et guardar et adelantar su pro, et desviarlos su daño en todas las maneras que podieren, et débenlos servir bien et lealmente por el bienfecho que dellos resciben. Otrosi decimos que el señor debe amar, et honrar et guardar sus vasallos, et facerles bien et merced, et desviarlos de daño et de deshonra: et quando estos debdos son bien guardados, face cada uno lo que debe, et cresce et dura el amor verdadero entre ellos."

Id., 4, 26, 8: "Perder puede el feudo en su vida el vasallo si non compliese al señor ó á sus fijos el servicio quel prometió de facer por razon dél."

Id., 4, 26, 9: "Matando el vasallo al hermano, ó al fijo ó al nieto de su señor, debe perder por ende el feudo: otrosi decimos que si el vasallo yace con la muger de su señor, ó con su fija ó con su nuera, que debe perder el feudo; eso mesmo serie si se trabajase en alguna manera de rescebir a alguna dellas para traerla á facerle tal deshonra. Por todas estas cosas sobredichas et por cada una dellas que deximos en la ley ante desta por quel vasallo debe perder el feudo quando la feciere, por esas mesmas pierde el señor la propriedat del feudo, si feciere alguna dellas contra la persona del vasallo, ó de su muger, ó de sus fijos, ó de sus fijas, ó de sus nueras, et finca despues deso la propriedat del feudo al vasallo para siempre por juro de heredat."

[2] Id., iv. 24, 5: "Desnaturar segunt lenguage de España tanto quiere decir como salir home de la naturaleza que ha con su señor, o con la tierra en que vive. Et porque esto como debdo de natura non se puede desatar sinon per alguna derecha razon: et las derechas razones porque los naturales pueden esto facer son quatro: la una es por culpa del natural, et las tres por culpa del señor: et esto serie como quando el natural feciere traycion al señor ō á la tierra, que solamiente por el fecho es desnaturado de los bienes et de las honras del señor et de la tierra. Et la primera de las tres que viene por culpa del señor es quando se trabaja de muerte de su natural sin razon et sin derecho: la segunda sil face deshonra en su muger: la tercera, sil desheredare á tuerto, et nol quisiere caber derecho por juicio de amigos ō de corte."

We have pointed out in the second volume that there had been considerable discussion among the Bologna Civilians about the rights of the emperor over private property, and we have referred to Savigny as having put together the traditions as to the differences among them when they were consulted by Frederick Barbarossa on the matter.[1] The doctrine that the emperor was the owner of all private property had been traditionally ascribed especially to Martinus; and it is noteworthy that Odofridus, the most important Civilian of the later thirteenth century, emphatically repudiates the doctrine. The emperor, he says, is "Dominus," "non quoad proprietatem sed quoad protectionem." Andrew of Isernia, who was learned in Roman law as well as in feudal, in his commentary on the Neapolitan Constitution, with equal emphasis maintains, as we have said before, that the prince cannot deprive a man of his property against his will, unless he has been guilty of some crime, and adds that to maintain that the prince could do this was to fall back into the error of Martin, who said that the prince was the owner of all things, "quoad proprietatem."[2] John of Paris, in the course of a discussion of the relation of the Pope especially to Church property, to which we shall have occasion to return, lays down dogmatically the principle that lay property belongs to individuals who have full power of disposing of it, and that therefore neither the Pope nor the prince has "dominium vel dispensationem" in such things.[1] It is even more significant that Alfonso X. in the 'Siete Partidas,' after setting out in the highest terms the dignity and authority of the emperor, adds that when the Romans gave him this authority, they did not intend to make him the lord of men's property in such a sense that he could dispose of it at his capricious will.[2]

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[1] Cf. vol. ii. pp. 72-74, and Savigny, 'Geschichte des Römischen Rechts im Mittelalter,' chap. xxviii. 3.

[2] Odofridus, 'Comm. on Digest,' fol. 2, v.; 'Prima Constitutio,' ii. 5: "Dixit dominus Martinus quod imperator non solum est dominus eorum que sunt imperii: immo est dominus proprietatis omnium rerum singulorum hominum . . . . bene est dicendum quod imperator est dominus proprietatis omnium rerum que sunt imperii, et rerum singulorum hominum est dominus non quoad proprietatem; sed quoad protectionem."

Andreas of Isernia, 'Peregrina,' fol. 4: "Sed etiam princeps non potest statuere, quod debet ille solvam ego, quia re mea me invito sine mea culpa me privare non potest. . . . Alias reinciderem in errorem Martini qui dicit omnia esse principis quoad proprietatem."

It is evident that there had been some uncertainty among the Civilians about this matter, and it is possible that we have here one source of later theories about the authority of the absolute monarch in taxation. It is, however, also clear that in the later thirteenth century even those who were acquainted with the Roman law were controlled by the general conception of the legal limitations upon the rights of the lord, which were an essential characteristic of the feudal system. The property of the vassal was liable to certain demands on the part of the lord. In addition to other obligations of service he was bound to render monetary help in certain cases, and these were pretty much the same everywhere in Western Europe, but beyond these he was not normally bound. This is the significance of the clause of Magna Carta which lays down the rule that no scutage or aid should be levied in the kingdom except in the three cases, of the redemption of the king from captivity, the knighting of the king's eldest son, and the marriage of his eldest daughter, except by the common council of the kingdom. This is not a mere incident of a factious conflict, but the enunciation as a rule of the national constitution of England of that which was the common principle of mediæval society.[3]

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[1] John of Paris, 'Tractatus de potestate regia et papali,' vii.: "Et ideo nec princeps nec Papa habet dominium vel dispensationem in talibus."

[2] 'Siete Partidas,' ii. 1, 2: "Ca maguer los Romanos, que antiguamente ganaron con su poder el señorio del mundo ficiesen emperador et otorgasen todo el poder et el señorio que habien sobre las gentes para mantener et defender derechamente el pro comunal de todos, con todo eso non fue su entendimiento del facer señor de las cosas de cada uno, de manera que las podiese tomar á su voluntad, sinon tan solamente por alguna de las razones que desuso son dichas."

[3] 'Magna Carta,' xii.: "Nullum scutagium vel auxilium ponatur in regno nostro, nisi per commune consilium regni nostri, nisi ad corpus nostrum redimendum, et primo genitum

It may, however, be said or thought that the limitation of the authority and rights of the prince was little more than a theory, and had little relation to the actual facts of mediæval life. It cannot, indeed, be doubted that mediæval society was often disorderly, and that it might at times appear almost anarchical. And it is not very difficult to see the cause of this. The administrative machinery of society in the Middle Ages was still very imperfect; it was only slowly that it was taking shape. It may perhaps be said that it was the failure of the Empire to develop this that was a cause as well as symptom of its gradual dissolution, in contrast with its successful development in countries like England and France. It is not, however, within the scope of this work to deal except incidentally with this matter.

It must not, however, be supposed that there was no provision in the political systems of the Middle Ages for the enforcement of the law, and even of what we may call the constitutional laws, the laws which restrained and limited the rights of the prince.

We have dealt with this matter in some detail in a former volume, and have pointed out that the feudal systems not only recognised the mutual and limited character of the obligations and rights of lord and vassal, but also provided in the feudal court an authority whose function it was to determine questions with regard to difficulties which might arise between lord and vassal. And we have pointed out that even Bracton says that, while the ordinary processes of law could not be used against the king of England, it might be maintained that failing any other remedy the "universitas regni," and the "baronagium" could deal with the matter in the king's court.[1] We cannot here recapitulate our previous

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filium nostrum militem faciendum, et ad filiam nostram primo genitam semel maritandam, et ad hæc non fiat nisi rationabile auxilium."

Cf. for a full discussion of this and other citations from 'Magna Carta,' Professor M'Kechnie's admirable work upon it.

[1] Cf. vol. iii. part i. chap. 4. We should wish again to refer to the treatment of "Proceedings against the King," by Professor Ludwig Ehrlich, in 'Oxford Studies in Social and Legal History,' ed. Sir Paul Vinogradoff, vol. vi.

treatment of the subject, but we may notice one or two illustrations of the same principles in writers with whom we did not deal in our earlier volume, and then consider some very interesting constitutional methods which are related to it.

Vincent of Beauvais cites from a writer whom he calls "Frater Gulielmus" the statement that if a vassal has "guerra" against the count, he is to have recourse to the authority of the king, and if the count has a complaint against the king, and the king will not do him right (give him law) by means of his equals in the Court, it is lawful for him to defend his right by arms, but he may not do this merely by his own authority.[1]

Andrew of Isernia, in his 'Commentary' on the constitutions of the kingdom of Naples, emphatically asserts the general principle that there is a proper authority to decide cases which might arise between the lord and his vassal, that the lord cannot be judge in his own case, and that such cases are decided by the whole body of the vassals who are peers.[2]

It is only when we take account of this fundamental principle of mediæval constitutional law that we can properly understand the real significance of that famous clause of

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[1] Vincent of Beauvais, 'Speculum,' vol. ii. 10, 70: "'Frater Gulielmus' . . . Cum ergo vassallus comitis habet guerram contra comitem, regis est auctoritas requirenda. Si autem comes contra regem et rex nolit ei jus exhibere, per pares curiæ humiliter requisitus, credo, quod si jus suum armis defendat cum moderanime inculpatæ tutelæ non peccat. Impugnare tamen regem auctoritate propria non poterit."

The principle laid down here is very close to that of the 'Establissements de Saint Louis,' i. 53, and to that of Philip of Novara, 52, and Jean d'Ibelin, 201, in the 'Assizes of Jerusalem.' Cf. vol. ii. pp. 56-58, 62.

[2] Andrew of Isernia, 'Peregrina,' fol. 97, v.: "Sed si dominus dicat vassallum culpam commisisse propter quam feudum debet vassallus perdere, si verum esset, de quibus culpis hæc constitutio ponit tres. Cognitio harum culparum datur paribus quando dominus feudi in feudo baronia et comĩtatu suo habet vassallos pares, id est vassallos consimiles feudatorios. . . . Isti cognoscent si culpa est vera et determinabunt talem vassallum propter culpam probatam privandum feudo, et hæc determinatio dicitur exguardium. . . . Non erit dominus judex in causa sua."

Andreas is commenting on the 'Placita principum seu constitutiones regni Neapolitani,' iii. 19, and is dealing with cases of the sub-vassals and their lords who were vassals of the king, but the principle is expressed in general terms.

Magna Carta, in which it is laid down that no free man should be imprisoned or disseized or destroyed, or even attacked without the legal judgment of his peers, or the law of the land.[1] We are not here concerned with the detailed interpretation of all the phrases of the famous passage, or with the question how far it may be thought to embody some legal principles which are distinctly English. It is enough for us to observe that it was not an isolated attempt to establish some new principle of the law and the constitution, but that it was in its most essential principle nothing but a restatement of the fundamental principle of the feudal and constitutional system of the Middle Ages; that whatever authority was possessed by the lord or prince, it was limited and controlled by the law, and that this law had as its guardian a properly constituted court, and that this applied to the king or emperor as much as to any lesser lord.

It is, then, from this standpoint that we can consider and understand some mediæval forms of constitutional machinery, which at first sight may appear to the student merely eccentric or merely theoretical.

In the third volume we have drawn attention to the very interesting but apparently rather paradoxical doctrine of the 'Sachsenspiegel,' that there is a judge even over the emperor —that is, the Count Palatine; this is repeated by the 'Schwabenspiegel.'[2] We did not in that volume discuss the doctrine with any special reference to the German Empire or kingdom, but we must now return to it, for we shall find a most important illustration of its practical significance in the history of the later thirteenth century.

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[1] 'Magna Carta,' 39: "Nullus liber homo capiatur vel imprisonetur, aut dissaisiatur, aut utlegatur, aut exuletur, aut aliquo modo destruatur, nec super eum ibimus, nec super eum mittemus, nisi per legale judicium parium suorum vel per legem terræ."

[2] 'Sachsenspiegel,' iii. 52, 3: "Wenne klaget man over den Richtere, he sal antwerden vor deme Scultheiten, wen die Schultheite is richter siner Scult; als is die Palenzgreve over den Keiser, unde die Burchgreve over den Marcgreven."

'Schwabenspiegel,' 100: "Der Künic sol mit rehte dieser herschefte deheine in siner gewalt han iar und tac; er sol si hin lihen. Und tut er des niht, daz klagen die herren und anders daz in gebrist, dem Phalenzgraven von dem Rine; wan der ist, ze rehte, richter über den Künic, und da von hat diu Phalenz vil eren."

Cf. vol iii. p. 61.

At the Council or Diet of Nüremberg in the year 1274 Rudolph of Habsburg asked the Council to determine who was to be judge if the king of the Romans had a complaint to make against any of the princes of the empire with regard to the Imperial property, or any injury inflicted upon the kingdom or the king. The princes and barons, who were present, formally determined that from ancient times it had been held, and still continued to be held, that the Count Palatine was the judge in any case which the emperor or king might bring against any prince of his empire.[1] Rudolph accordingly brought before the Count Palatine the question of various possessions of the empire, which were detained by violence, and especially the question what was to be done about the King of Bohemia, who had contumaciously neglected to ask for enfeoffment. Judgment was given that any one neglecting to do this for a year and a day would lose his fief, and that the King of Bohemia should be summoned to appear before the Count Palatine to answer to the complaints of Rudolph, and the King of Bohemia was accordingly summoned.[2]

We can find further and very interesting illustrations of such methods of the limitation of the royal power in the law-books and history of the Spanish kingdoms.

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[1] M. G. H., 'Const.,' vol. iii. 72: "In publico consistorio tempore sollempnis et regalis curie Nurenberc celebrate, consedentibus principibus ac honorabili caterva comitum et baronum, maximaque multitudine nobilium et plebeiorum, astante coram serenissimo domino Rudolfo Romanorum Rege, ad exhibendum unicuique justiciæ complementum: (1) Primo petiit rex sentencialiter diffiniri, quis deberet esse judex, si Romanorum rex super bonis imperialibus et ad fiscum pertinentibus et aliis injuriis regno vel regi irrogatis contra aliquem principem imperii habet proponere aliquid questionis. Et diffinitum fuit ab omnibus principibus et baronibus qui aderant, quod Palatinus Comes Reni auctoritatem judicandi super questionibus quas Imperator vel Rex movere vult principi imperii, obtinuit et obtinet ex antiquo."

We would refer our readers to an important monograph by Weizsäcker in 'Abhandlingen der Königlichen Gesellschaft der Wissenschaften zu Göttingen,' vol. 33 (1886), in which he especially discusses the relation of the principles laid down here to the procedure of the deposition of Adolf in 1298.

[2] Id. id., 72 and 73.

The 'Siete Partidas' asserts emphatically the general feudal principle that in the case of a dispute between the lord and his vassal about the fief, the case cannot be decided by the lord. It then prescribes a method of determination different from that of the other law-books. Instead of the reference of such disputes to the Court, it provides that the lord and his vassal are to choose one or two of the other vassals to whom the case shall be referred, and the parties will then be bound to accept this decision. And then it is added that this holds of disputes between the king and his vassals just as much as it does in the case of other lords.[1]

In the proceedings of the Court or Cortes of Benavente of the year 1202, there is the record of a judgment given under these conditions upon a question at issue between the king and certain knights.[2]

In the proceedings of the Cortes of Leon of 1188, we have an example of the more normal mediæval method for the decision of cases between the king and his subjects. Alfonso IX. swears that he would never take measures against the persons or property of any one, of whom evil had been reported to him, until he had summoned them to his Court, to do right according to the judgment of the Court. Another clause of the proceedings of the same Cortes affirms the principle that not even the king himself is to use any form of violence against a man or his property except by process of law.[1]

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[1] 'Siete Partidas,' iv. 26, 11: "Contienda acaesciendo entre el señor et el vasallo sobre el feudo, deciendo el señor que habie fecho el vasallo por que lo debie perder, et el otro dixiese que non era asi et quel querie complir de derecho, entonce tal pleyto como este ó otro semejante dél non debe seer librado por el señor, ante si el señor hobiese otros vasallos que tengan feudo dél, deben el señor et el vasallo tomar uno ó dos dellos en que se accordaren amos á dos que lo oyan et lo libren: et desque asi los escogieren et les dieren poder de lo librar, debe cada uno dellos haber por firme et estar por lo que ellos judgaren. . . . Et lo que diximos en este título de los vasallos, entiéndese tambien de los vasallos que tienen feudo de las otros señores como de los que los tienen de los reyes."

[2] 'Collecion de Cortes de los reinos de Leon y de Castiella,' 8: "Ideirco ego Adefonsus Dei gratia rex Legionis et Galletie, una cum uxore mea . . . per hoc scriptum notum facio, vobis universis presentibus et futuris, quod me existente apud Beneventum et presentibus episcopis et vassallis meis, et multis de qualibet villa regni mei, in plena curia, tunc audita ratione, tam partis mee, quam militum et aliorum, datum est judicium inter me et ipsos ab electis judicibus, sic etiam iam fuerat judicatum inter antecessores meos et suos; quod hereditas quam milites tenent de episcopatu vel abadenguis vel aliis ordinibus in vita sua per capitulum, dum illa tenuerint debet habere illum forum et consuetudinem quam habent aliæ hereditates proprie ipsorum militum."

This is expressed in still broader terms in the proceedings of the Cortez of Valladolid in 1299. No one is to be killed or deprived of his property till his case has been heard and decided by "fuero" and law, those who have been imprisoned are to be properly judged, and the Alcaldes and other officers are strictly forbidden to act against this rule.[2] These phrases are almost curiously like those of the famous clause of Magna Carta.

We can find illustrations of the same principles and methods in the records of the other Spanish States. There are several examples of the judgments given by the "Curia" in cases between Raymond, Count of Barcelona, and his vassals,[3] and we have an account of the settlement of a dispute between James, King of Aragon, and his seneschal in 1263; the king and his seneschal submitted their case to the decision of four arbitrators, and promised to accept their judgment.[1]

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[1] Id., 7, 2: "Juravi etiam quod nunquam propter mezclam mihi dictam de aliquo, vel malum quod dicatur de illo, facerem malum vel damnum vel in persona vel in rebus suis, donec vocem eum per litteras meas, ut veniat ad curiam meam facere directum, secundum quod curia mea mandaverit; et si probatum non fuerit, ille qui mezclam fecit, patiatur penam supradictam et solvat insuper expensas, quas fecit mezclatus in eundo et redeundo. . . .

4. Statui insuper quod ego, nec alius de regno meo destruat domum, vel invadat, vel incidat vineas vel arbores alterius; sed qui rancuram de aliquo habuerit, conqueratur mihi vel domino terræ aut justitiis qui ex parte mea vel episcopi vel domini terræ constituti fuerint."

[2] Id., 25, 1: "Premieramiente tenemos por bien que se faga justicia egualmientre e en todos, e que ninguno non sea muerto nin despechado sin ser oydo e librado por fuero e por derecho, e los que ffueren presos que fata que sean librados como dicho es, quelos sus bienes non los sean tomados nin enganados, mas que sean puertos en rrecabado; e que los ffagamos luego librar, en manera que non duren mucho en las prisiones, e queles den delo sugo lo que ovieren mester para su proueemiento mientre que estudieren enla prision. Et defendemos que alcalldes nin merinos nin otro ninguno non sean osados de yr contra esto, e si alguno o algunos quisieren pasar contra ello, mandamos a los conseios que gelo non consientan."

Cf. id., 26, 3. "Otrosi me pidieren mercet que mandase facer la justizia en aquelos que la mereçen comunialmente con fuero e con derecho: e los omes que non sean presos nin muertos, nin tomado lo que an sin seer oidos por derecho e por fuero de aquel lugar do acaeziere, e que sea guardado meior que se guardo fasta aqui. A esto uos digo, quelo tengo, por bien e quelo fare asi daque adelante."

[3] 'Collecion de documentos ineditos del archivio general de la corona de Arragon,' vol. iv. 145, 146, 147.

When we take account of these obvious parallels between the general principles and methods of the political organisation of the Spanish States with those of Northern Europe, we find ourselves in a position to recognise the nature of that judicial officer, the "Justicia" of Aragon. At first sight his position may seem to us strange; that there should be an official whose jurisdiction extended even over questions at issue between the king and his nobles may seem paradoxical and anomalous. An interesting attempt has indeed been made to suggest that the office was in its nature of Moorish or Saracen origin, and it is very possible that some influence of this kind may be traced in its development in Aragon.[2] We would, however, urge that the difficulty in understanding the character of the functions of the Justicia really rests upon the failure to observe such an important parallel to the office as the position of the Count Palatine in Germany, and the general principle that the feudal Court was normally supreme in all questions between the king and his vassals.

We have, then, endeavoured in this chapter to set out briefly and with special reference to the thirteenth century the principle that the authority of the mediæval ruler was a strictly limited authority, that the conception of an absolute or arbitrary monarchy was wholly alien to the mode of thinking of that age, and that the legal or constitutional forms of mediæval political societies embodied this constitutional conception—that is, that this was not merely a theory or ideal of government, but that the mediæval law provided in various ways for its enforcement. The imperfection or inadequacy of the machinery must not blind us to the recognition of the principle or of its practical importance.[1]

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[1] Id., vol. vi. pp. 159-164: "Noverint universi quod cum contentio fuisset, inter illustrem dominum Jacobum, Dei gratia Regem Aragonensem, etc., et nobilem Petrum de Montichateno, senescalium ejusdem domini regis. . . . Et super hoc dictus dominus rex et dictus Petrus de Montichateno miserunt predictam causam in posse domini eximii Petri de Arenoso, et Thomasei de Sancto Clemente, et Gulielmi de Scala, et Amaldi de Boschio, quod quidquid ipsi arbitri cognoscerent quod dominus rex deberet facere in predicto facto majordomie, quod dictus dominus rex et dictus Petrus de Monte Cateno starent in cognitione eorumdem arbitrorum."

[2] Cf. Julian Ribera, 'Origenes del Justicia de Aragon' Saragossa, 1897).

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[1] We should like to draw the attention of students of mediæval political principles to a very interesting and suggestive study by M. François L. Ganshof (in the 'Melanges d'Histoire offerts a Henri Pirenne') which has only just come into our hands, by the courtesy of the author. M. Ganshof has collected a large amount of evidence which goes to show that the subordination of the Superior and even of the King to the judgment of the Court can be traced back at least to Carolingian times, and is thus much older than the developed feudal system. M. Ganshof's contention is one of great interest and importance, and we venture to hope that he will continue his most valuable study of the question.

CHAPTER VIII.

METHODS AND EXPERIMENTS IN THE CONTROL OF THE RULER.

We have endeavoured in the previous chapters to make it clear not only that the authority of the ruler, in mediæval theory was a strictly limited authority, but that there was an appropriate legal machinery to enforce these limitations.

We must, however, in order to appreciate the significance of these principles, go somewhat further, and observe that not only the theorists but the Jurists recognised the propriety of what to the modern mind might seem extra-constitutional methods, by which in the last resort the ruler, if he were to refuse to submit to legal authority, might properly be coerced and even deposed. We must bear in mind that many actions which to us may seem extra-constitutional, would have been considered in the Middle Ages proper and legitimate methods, which were well within the principles of the political order.

We must consider, first, the meaning of the principle that in certain circumstances the subject had the right to renounce his allegiance and even to resist the prince by force. We must be careful lest we should misunderstand this, and look at it from the standpoint of modern conditions and ideas; to us, no doubt, the refusal to obey the authority of the State appears as, normally, little better than anarchism; to the mediæval mind it had not necessarily any such character.

The refusal to obey, the withdrawal of allegiance, might be to them nothing more than the legal maintenance of a legal right against an arbitrary and illegal action or demand.

The prince, no doubt, had his legal rights, but so also had the subjects; to them the prince was not normally a sovereign power behind and beyond the law, for he could only act within the law.

This is the meaning of what might at first sight seem the extravagant and eccentric constitutional methods which are set out in the 'Assizes of Jerusalem,' both by Jean d'Ibelin and Philip of Novara. They both maintain that, if the king were to refuse to allow any one of his vassals to bring a claim against him in the feudal Court, or were to refuse to carry out the decision of the Court, or if he were to seize and imprison his vassal without the judgment of the Court, then the vassals were to declare to the lord that they were bound by their obligations to each other and by their duty to maintain the honour of the Court, and that therefore they would renounce all service to him until he had submitted the matter in dispute to the judgment of the Court, and had carried out its decisions.[1]

This is the constitutional meaning of the agreement which Matthew Paris represents the English barons as making at St Edmund's in 1214. The barons had received from Archbishop Stephen Langton a charter of Henry I., and they agreed that if King John refused to grant them the laws and liberties contained in this charter, they would withdraw their allegiance, and would make war upon him until he should confirm, by a charter under his own seal, what they demanded.[2] The barons were acting within the general principles of the feudal law in threatening to withdraw their allegiance, but it may be doubted whether they were not going beyond, at least, the letter of it, in threatening to make war upon the king. Jean d'Ibelin, in the 'Assizes of Jerusalem,' while, as we have said, clearly maintaining that, if the king would not accept the decision of the Court, the vassals were to withdraw their allegiance, is also clear in saying that they could not bear arms or use force against him personally.[1] The right of a vassal, to whom the king refuses to do justice in the Court, to make war upon the king, and to require his own vassals to follow him, was, however, recognised by that compilation of the later part of the thirteenth century which we know as the 'Etablissements de St Louis.'[2]

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[1] Philip of Novara, 51, 52; Jean d'Ibelin, 201, 244. Cf. vol. iii. pp. 56-59.

[2] Matthew Paris, 'Chonica Majora,' vol. ii. p. 583: "Nam cum diu simul et secretius tractare cœpissent, producta est in medium carta quædam regis Henrici primi, quam idem barones a Stephano Cantuarensi Archiepiscopo, ut predictum est, in urbe Londoniarum acceperant. . . . Itaque convenerunt ad ecclesiam Sancti Eadmundi, et incipientibus majoribus juraverunt super majus altare, quod si rex leges et libertates jam dictas concedere diffugeret, ipsi ei werram tam diu moverent et ab ejus fidelitate se subtraherent, donec eis per cartam sigillo suo munitam confirmaret omnia quæ petebant."

We may compare the somewhat intricate provisions of the 'Siete Partidas.' If the king refuses any of his "Ricos Hombres" the judgment of the Court, he must give him thirty days within which he may leave the kingdom accompanied by his sub-vassals, and he can then make war upon the king until he has succeeded in getting possession of the equivalent of that which the king took from him.[3]

In other Spanish documents of the thirteenth century we find the admission or assertion of a more general right of resistance to any attempt to violate the "fueros" and usages. In a privilege granted in 1282 by Sancho, who was in revolt against his father, Alfonso, to the "Concejo de Briones," we find him approving resistance not only to the king, but to himself, and all others who should refuse to respect the "fueros" and customs.[4]

There is, however, a greater constitutional significance in the formation and purpose of the "hermandades" or leagues between various cities and others. We have an excellent illustration of the nature and purpose of these leagues in the documents concerning the formation in 1282 of a "hermandad" between the towns of Cordova, Jahen, Baeza, Ubeda, Andujar, Arjona, and Sant Esteban, together with Gonzalo Ibañez, Sancho Sanchez, and Sancho Perez. They unite and form a "hermandad" among themselves to protect their "fueros" privileges and franchises, and they agree that if any lord either in the present or the future should attack them, they were bound to come to each other's assistance.[1]

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[1] Jean d'Ibelin, 201: "Sire, voz estes notre seignor, ne contre vostre cors noz ne porteremes armes, ni ne ferions chose a force. Et puisque voz noz defendés a force a delivrer nostre per qui est pris e emprisonnés sans esgart ne sans conoisance de court, noz voz gajons toz ensemble et chacun par sei dou servise que noz voz devons tant que voz aiés nostre per tel delivrer ou fait delivrer, ou dite reison por quei voz ne le devés faire, e tel que court l'esgarde ou conoise."

Cf. vol. iii. p. 58.

[2] Cf. vol. iii. p. 63.

[3] 'Siete Partidas,' iv. 25, 10-13.

[4] 'Documentos de la Epoca de Don Alfonso e el Sabio' (in 'Memorial historico Español,' Royal Academy of History of Madrid, vol. ii. 199): "Mandovos que vos emparedes é vos defendades tambien del Rey como de mi."

We have said enough, we think, to make it clear that the feudal law of the Middle Ages not only recognised that the ruler or prince was subject to the law, and that there was a proper Court to decide what was law, and to judge in cases of dispute between the prince and his vassals, but also that it recognised clearly that there was a legal method of enforcing the authority and judgment of the Court—that is, by the withdrawal of allegiance, and also that, at least in some cases, direct resistance to the arbitrary and illegal action of the ruler was itself legal.

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[1] Id., vol. ii. 205: "Sepan quantos esta carta vieren, como nos los concejos de Cordova, de Jahen, de Bæza da Ubeda, de Andujar, de Arjona, é de Sant Esteban, é yo Gonzalo Ibañez de Anguilar, é yo Sancho Sanchez fijo de D. Sancho Martinez de Iodar, é yo Sancho Perez de Iodar, todos a servicio de Dios, é del muy noble Señor Infante D. Sancho, fijo majo heredero del mui noble é alto rey D. Alfonso, otorgamos nos por vassallos del Infante D. Sancho, et metemos nos so su señorio con las villas é con los castiellos é con quanto que avemos é avremos; é a pro, é a honra de nos, todos facemos tal pleito a tal postura que seamos unos, é facemos hermandad entre nos que guardemos nuestros fueros é nuestros privilegios, e nuestras franquezas, é todas las libertades é los buenos usos, é las buenas costumbres que aviemos en el tiempo del re D. Fernando, que nos el dio, ques en Paradiso; é que nos dio é nos otorgo el re Don Alfonso, é nos otorgo nuestro Señor el Infante Don Sancho; é si alguno señor de los que son, é de los que seran, é otros qualesquier vinieren contra esto por menguer ó quebrantar nuestros fueros, é nuestros privilegios, é nuestras franquesas, é nuestras livertades, é los buenos usos, é las buenas costumbres en todos ó en ellos que nos paremos todos amanparallo, é á defendello, é con qualquier de nos que desto falleciessen faciendolo saver los unos a las otros, que los que lo sufieren é non quisieren venir aiudallos á aquellos, é que ficieren el tuerto destas cosas sobredichas que sean traidores como quien mata señor, ó traie castiello; é que será mostrado cada año en la junta."

The refusal of obedience was then the first aspect of what we may call the legitimate method of enforcing the limitation of the authority of the ruler. It is necessary to distinguish this, from the principle that in the last resort the prince who refused to obey the law might be deposed. To the modern mind the renunciation of obedience or the withdrawal of allegiance may seem indistinguishable from deposition, but it was not so in the Middle Ages.

Having then observed this, we must turn to the question of the deposition of the ruler. We are not here concerned with the mere fact of deposition, or with the justice or expediency of particular cases of deposition, but with the question how far this was thought of as being in principle legal and constitutional. We must begin by dismissing from our minds such a conception as that of the modern constitutional doctrine of England, that the king can do no wrong. Those who have any acquaintance with the English history do not need to be reminded that this doctrine, which might seem to represent a theory of absolutism, actually represents the method by which the arbitrary power of the monarch has been destroyed. In the Middle Ages this doctrine, however, had no place; the king, like any other person in the community, was responsible for his own actions.

We have in a previous volume dealt with the deposition of the Emperor Henry IV. and the theory of that deposition as expressed by various persons, and especially by Manegold of Lautenbach; we have also discussed the theory of John of Salisbury that the unjust and tyrannical ruler has lost all right to authority, and may properly be attacked and even slain.[1] We are now concerned with the question how far this principle continued to be held in the thirteenth century.

We may begin by observing some words of a writer who held what we have seen to be an unusual and even abnormal view of the nature of the regal authority—that is, Egidius Colonna. As we have seen, he maintained that the best form of political authority was that of a monarchy which was itself the source of law, and was above law.[2] It was the same

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[1] Cf. vol. iii. part ii. chaps. 5 and 6.

[2] Cf. p. 74.

Egidius Colonna, however, who, as we have seen, in his tract on the resignation of the Papal throne by Celestine V., maintained that as the authority of the ruler must be established by the consent of men, so also by the same consent he might resign or even be deposed.[1] With this we should compare the very careful discussion by St Thomas Aquinas of the circumstances under which and the methods by which the tyrannical ruler should be deposed, with which we have already dealt.[2]

We may now turn to the legal works and the records of constitutional proceedings, and we may begin by observing some words of the 'Sachsenspiegel.' No man may proceed against the king's life until he has been by proper sentence deprived of his kingdom.[3] This is repeated in the compilation which we know as the 'Schwabenspiegel,' but it adds that no one can declare judgment on the king's life or honour, except the princes.[4] It is clear that both these works assume in principle that there is a legal process by which the king can be deposed. At first sight we might very well suppose that these were little more than the phrases of a theoretical system of law, but it is noticeable that even the great Frederick II. used, if only incidentally and under circumstances which might well make such a statement diplomatically convenient, words which have the same implication. In the Encyclical letter which he addressed to St Louis of France and to the "Magnates Angliæ," as well as to the princes of the empire, he protested against his deposition by Pope Innocent IV. as being the action of a "judex incompetens," and urged that the sentence and the whole proceedings were null and void, for none of the princes of Germany "a quibus assumptio status et depressio nostra dependit," had confirmed them by their presence and counsel.[1]

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[1] Egidius Colonna, 'De Renuntiatione Papæ,' xvi. 1: "Sed quamvis sic requirit natura negotii, quod scientes melius pericula prævidere, aliis præficiantur, ut sub eorum gubernacula multitudo servetur, oportet tamen quod hoc compleatur per consensum hominum. Et sicut per assensum hominum perficitur et completur, ut quis aliis præficiatur, sic per consensum hominum contrario modo factum fieri potest, quod præfectus cedat, vel quod etiam deponatur."

[2] Cf. p. 96

[3] 'Sachsenspiegel,' iii. 54, 4: "Also ne mach deme Könige neman an sin lif spreken, ime ne si dat rike vore mit ordelen verdelt."

[4] 'Schwabenspiegel,' 104: "Den Künige mac nieman an den lip gesprechen, im werde daz riche ê verteilet mit der Fürsten urteile. Uber des Küniges lip und über sin ere mac nieman urteil sprechen wan die Fürsten."

In the proceedings related to the deposition of Adolf of Germany in 1298, we find that the princes concerned assumed that they were acting by due process of law, and it is worth while to observe the procedure in a little detail. The Archbishop of Maintz called a Council to consider the troubled condition of Germany, and to this he summoned both the princes who had the right of election, and Adolf himself. The important princes present were the Archbishop himself, who was said to be acting also for the King of Bohemia; the Duke of Saxony, holding also the proxy of the Count Palatine; and the Margrave of Brandenburg. They enumerated various charges against him, the violation of Churches and ecclesiastics, the toleration of violence against women, the interference with ecclesiastical liberties, especially by demanding gifts before he would grant the "Regalia" to the bishops, and various acts of aggression upon the rights of the German princes, counts, barons, &c. They found Adolf guilty of these crimes, and declared that he had proved himself to be incompetent and useless for so great an authority, and therefore, after careful deliberation and by the common council and will of all the electoral princes, the bishops, dukes, counts, barons, and wise men present, the electoral princes declared Adolf deposed, and also absolved all men from their oath of allegiance to him.[2]

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[1] M. G. H., 'Const,' vol. ii. 262, 9 "Advertat igitur prudentia tua, si predicta sententia nulla ipso jure, nullus ipso jure processus, . . . debeat observari, quam nulli nostrorum Germaniæ principum a quibus assumptio status et depressio nostra dependet, presentia vel consilio firmaverunt."

[2] M. G. H., 'Constitutiones,' vol. iii. 589, 7: "Igitur super premissis cum principibus electoribus episcopis, prelatis, ducibus, comitibus, baronibus et sapientibus, omnibus ibidem presentibus, deliberatione prehabita diligenti, de communi consilio et voluntate omnium de consensu unanimo illorum, quorum intererat, predictum dominum Adolphum qui se regno reddidit tam indignum, quique propter suas iniquitates et causas prescriptas a Deo ne

In the promulgation of the deposition of Adolf, and the election of Albert Duke of Austria, issued by the Duke of Saxony, stress is especially laid upon the responsibility of the electoral princes for the peace and wellbeing of the empire, and upon the incompetence of Adolf. And the Duke of Saxony proclaims that they had therefore, after careful deliberation, and following the due process of law, deprived him of the kingdom.[1]

We are not here concerned to discuss the real political causes of this action, or the question how far the action of the princes was reasonable and in the circumstances justifiable; we are concerned only with the fact that they represent themselves as exercising their constitutional power in accordance with constitutional law. We would suggest that this affords an illustration of the suggestion of St Thomas Aquinas. that there should be some method and form of public action by which the prince who proved incompetent or tyrannical should be deposed.[2]

It is in truth clear that the authority of the mediæval prince was not only limited by the law, but that some at least of the political systems of the Middle Ages provided a constitutional form by which this limitation might be enforced even by deposition. The right of withdrawal of allegiance

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regnet amplius est eiectus, privatum regno, cui hactenus præfuit, a domino ostendimus, denunciamus privatum, et nihilominus concordi sententia predictorum principum electorum dictante, sentenciando privamus; omnes qui ei juramento fidelitatis tenentur astricti, a juramento hujusmodi perpetuo absolventes, firmiter inhibendo ne quisquam de cetero sibi tanquam regi pareat vel intendat."

[1] Id. id., vol. iii. 590: "Unde cum in hiis quæ ad conservacionem sanctæ pacis et honorabilem sacri statum Imperii expedire videntur, nos una cum ceteris principibus electoribus esse deceat circumspectos, considerato et cognito, quod regnante predicto domino Adolfo quies temporum perturbata non possit aliquatenus reformari, sed mala multiplicarentur in terris, intollerabilibus et dampnosis hujusmodi compulsi defectibus, ad quorum emendationem predictum regem competentem non vidimus, animadvertendum juste duximus in eundem, deliberacione matura et diligenti sollicitudine perhabita, juris etiam ordine ut decuit observato, regno Romano, cui minus utiliter prefuit cuiusque per demerita reddidit se indignum, privantes ipsum et privatum denunciantes dictante sententia concordi predictorum principum electorum."

[2] Cf. p. 96.

and the right of deposition were, however, cumbrous and inconvenient methods for the restraint of the prince.

We must therefore now consider very briefly the significance of some very important thirteenth-century experiments in the establishment of easier and more effective methods of control. We do not pretend here to discuss the history of these experiments in detail; that has already been done for England with characteristic restraint and caution in the great work of Bishop Stubbs, and recently there has appeared an admirably detailed study of some aspects of these experiments.[1] We are concerned with the political ideas which lay behind these experiments; for they were important not only in themselves but for that which they anticipated.

It is in England that we find the most important examples of these experiments, but there are also some important parallels in Spain.

This is the larger historical significance of the sixty-first clause of Magna Carta, the clause in which the king sanctioned the appointment by the barons of a Committee from their number, which was to have authority not only to demand of the king and the justiciary the execution of the provisions of the charter, but to compel this with the assistance of the whole community (communa totius terræ), if necessary by force.[2] No doubt the situation was exceptional, the good faith of John was more than doubtful, and it would be unreasonable to suppose that the barons thought that they were creating a permanent constitutional system. And yet it is in these provisions that we have the germ of the public control of what we should in modern times call the administrative action of the Crown.

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[1] Cf. Stubb's 'Const. Hist.,' chap. 14, and Mr Jacob in 'Oxford Studies in Social and Legal History,' ed. Vinogradoff.

[2] Magna Carta, 61: "Cum autem pro Deo et ad emendacionem regni nostri, et ad melius sopiendam discordiam inter nos et barones nostros ortam, hæc omnia prædicta concesserimus, volentes ea integra et firma stabilitate in perpetuum gaudere, facimus et concedimus eis securitatem subscriptam; videlicet, quod barones eligant viginti quinque barones de regno quos voluerint, qui debeant pro totis viribus suis observare, tenere et facere observari, pacem et libertates quas eis concessimus, et hoc presenti carta nostra confirmavimus, ita scilicet quod si nos, vel justitiarius noster, vel ballivi nostri, vel aliquis de ministris nostris, in aliquo erga aliquem deliquerimus, vel aliquem articularum pacis aut securitatis transgressi fuerimus, et delictum ostensum fuerit quatuor baronibus de predictis viginti quinque baronibus, illi quatuor barones accedant ad nos vel ad justiciarium nostrum, si fuerimus extra regnum, preponentes nobis excessum: petent ut excessum illum sine dilacione faciamus emendari. Et si nos excessum non emendaverimus, vel si fuerimus extra regnum, justiciarius noster non emendaverit infra tempus quadraginta dierum computandum a tempore quo

If this arrangement stood alone, it would no doubt have little significance, but when we observe that the methods which were here proposed were carried much further in the demands of the barons of 1244 and 1258, this clause of Magna Carta receives a new importance.

We only know the demands of the barons in 1244 through Matthew Paris, and we must therefore treat the subject with caution, but it would appear from his narrative that the barons complained that the provisions of the great Charter were not being carried out, and they therefore demanded the appointment of a justiciar and chancellor.[1] Matthew Paris also gives an account of a scheme of reform which seems to belong to the same time under which a new charter was to be drawn up, and its execution entrusted to four counsellors chosen by the common consent.[2]

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monstratum fuerit nobis vel justiciario nostro si extra regnum fuerimus, predicti quatuor barones referant causam illam ad residuos de illis viginti quinque baronibus, et illi viginti quinque barones cum communa totius terræ distringent et gravabunt nos modis omnibus quibus poterunt, scilicet per captionem castrorum, terrarum, possessionum, et aliis modis quibus poterunt, donec fuerit emendatum secundum arbitrium eorum, salva persona nostra et reginæ nostræ et liberorum nostrorum; et cum fuerit emendatum intendent nobis sicut prius fecerunt."

[1] Matthew Paris, 'Chronica Majora,' vol. iv. p. 362: "Et quia carta libertatum quas dominus rex olim concesserat et pro cujus observatione archiepiscopus Cantuarensis Ædmundus juraverat, fide jusserat, et certissime pro rege promiserat, nondum exstitit observata, et auxilia quæ toties concessa fuerant domino regi ad nullum profectum regis vel regni devenerant; et per defectum cancellarii brevia contra justitiam pluries fuerant concessa, petitum fuit ut secundum quod elegerant, justitiarius et cancellarius fierent, per quos status regni solidaretur, ut solebat."

[2] Id. id., p. 366: "De communi assensu quatuor eligantur potentes et nobiles de discretioribus totius regni, qui sint de consilio domini regis, et iurati quod negotia domini regis et regni fideliter tractabunt, et sine acceptione personarum omnibus iustitiam exhibebunt. Hi sequentur dominum regem, et si non omnes, semper duo eorum ad minus præsentes sint, ut andiant querimonias singulorum, et patientibus iniuriam celeriter possint subvenire. . . . Et erunt libertatum

It is in the Provisions of Oxford of 1258 that we find these tentative schemes assuming a definite and precise form. Much in the details of these are difficult to make out, and we should refer to Bishop Stubbs for a complete account,[1] but the general principles are clear.

A council of twenty-four was to be appointed, half by the king, half by the barons; the king's representatives were to select two of the barons' representatives, and the barons' representatives two of the king's, and these four were to elect fifteen who were to be confirmed by the whole twenty-four, and to form the perpetual council of the king. They were to have authority to advise the king on all matters concerning the government of the kingdom, and to amend and put in order all things which required this; and they were to have authority over the "haute justice" (the Justiciar) and over all other people.[2] It was also of great significance that the justiciar, the treasurer, and the chancellor were to be appointed only for a year at a time, and were to give account at the end of the year[3]; and that the justiciar was to swear that he would act according to the provisions to be made by the twenty-four and the council of the king, and

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conservatores. Et sicut de omnium assensu eliguntur, sic sine communi assensu non poterit aliquis eorum ameveri."

We owe both these references to Stubb's 'Const. Hist.,' chap. 14.

[1] Stubb's 'Const. Hist.,' chap. 14.

[2] Provisions of Oxford, 'Annales de Burton' (Rolls Series), p. 452: "Des Parlémenz quanz serrunt tenus per an et coment.

Quinze serrunt nomez par ces quatre, ceo est a saver per le Cunt le Marechale, le Cunt de Warewik, Hugo le Bigot, et John Mansel, ki sunt esluz par les 24, pur nomer les devent dit quinze, les queus serunt de conseil le rei. E serrunt cunfermez par les avant dit 24 ou par la greinore partie de els. E averunt poer del rei conseiler en bone fei del governement del reaume, et de totes choses ke al rei u al reaume pertenent. E pur amender et adrescer totes les choses ke il verrunt ke facent a adrescer e amender. E sur le haute justice, et sur totes autres genz. E se il ne poent tuz estre, ceo ke la greinure partie fera serra ferm et estable."

[3] Id., p. 450, 'De la haute justice': "Derichef ke justice seit mis un u deus, e quel poer il avera, e ke il ne seit fors un an. Issi ke al chef del an respoine devant le rei e sun cunseil de sun tens e devant lui ke serra apres lui."

"Del tresorer e de le escheker. Autel, del tresorer. Mes ke il rende acunte al chef del an."

"Del chanceler. Autel, del chanceler. Issi ke al chef del an respoine de sun tens. E ke il ne ensele hors de curs par la sule volunte del rei; mes le face par le cunseil ke serra entur le rei."

that the chancellor was to swear that he would seal no writ except writs of course (brefs de curs) without the commandment of the king and his council who were to be present,[1] or, as it is put in the passage cited before, he was to seal nothing outside of the ordinary course (hors de curs) by the sole will of the king, but only by the authority of the council, who were to be with the king.

It is no doubt true that St Louis in 1264 annulled the Provisions of Oxford, when they were submitted to his arbitration by the king and the barons, but his award was not accepted, and after the defeat of Henry III. at Lewes, the system of the Provisions was re-established in the Parliament of 1264, with some modifications. Three electors were to be chosen, and the king was to give them authority, in his place, to appoint a council of nine members of whom three at least were to be in rotation at the Court. By their counsel the king was to administer the affairs of the kingdom, and to appoint the justiciar, the chancellor, the treasurer, and the other officials both small and great.[2]

We have an excellent commentary upon the principles which lay behind these proposals in the contemporary 'Song of Lewes.' This was no doubt written by a partisan of the barons, but it is not the less significant as illustrating the growth of the conception that it was not enough to have good laws, but that some machinery should be created which would secure that the king should carry out these laws. The whole poem is deserving of careful study; it is enough for us, here, to take note of its most important aspects.[1] As the author sees it, the real question at issue was whether the king should be free to govern according to his own will, and with the advice of such counsellors as he might himself choose, or whether he was to rule according to the law, and with the counsel of those who represented the community and were acquainted with its customs.[2]

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[1] Id., p. 411: "Ceo jura le haute justice de Engleterre. Il jure que ben e leaument a sun poer fra ceo ke apent a la justicerie de dreiture tenir, a tute genz al prou le rei e del reaume, solum la purveaunce fete et a fere par les vint et quatre, et par le cunseil le rey e les hauz humes de la tere, ki li jurrunt en cestes choses a aider e a maintenir.

Ceo jura le chanceler de Engleterre. Ke il ne enselera nul bref fors bref de curs sanz le commandement le rei, e de sun cunseil ke sera present: ne enselera dun de grant garde, ne de grant . . . ne de eschaetes, sanz le assentement del grant cunseil u de la greinure partie. Ne ke il ne enselera ren ke seit encontre le ordinement ke e fet e serra a fere par les vint e quatre, u par la greinure partie."

[2] Rymer, 'Foedera,' vol. i. p. 443 (ed. 1816): "Ad reformationem regni Angliæ eligantur et nominentur tres discreti et fideles de regno, qui habeant auctoritatem et potestatem a domino rege eligendi seu nominandi, vice domini regis, consiliarios novem; tres ad minus alternatim seu vicissim semper sint in curia presentes. Et dominus rex per concilium eorundem novem, ordinet et disponat de custodia castrorum et omnibus aliis regni negotiis. Præficiat etiam dominus rex per consilium predictorum novem, justitiarium cancellarium, thesaurarium, et alios officiales majores et minores in hiis quæ spectant ad regimen curiæ et regni."

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[1] We are glad to have the opportunity of expressing our obligations to the valuable edition of the text and the comments upon it by Mr C. L. Kingsford.

[2] 'Carmen de bello Lewensi':

485. "En radicem tangimus perturbacionis
Regni, de quo scribimus, et dissencionis,
Parcium, que proelium dictum commiserunt
Ad diversa studium suum converterunt.
Rex cum suis voluit ita liber esse,
Et sic esse debuit, fuitque necesse
Aut esse desineret rex privatus jure,
Regis nisi faceret quidquid vellet; cure
Non esse magnatibus regni, quos preferret
Suis comitatibus, vel quibus conferet
Castrorum custodium, vel quem exhibere
Populo justitiam vellet; et habere
Regni cancellarium thesaurariumque
Suum ad arbitrium voluit quemcunque
Et consiliarios de quacunque gente,
Et ministros varios se precipiente;
Non intromittentibus se de factis regis
Angliæ baronibus, vim habente legis
Principis imperio: et quod imperaret
Suomet arbitrio singulos ligaret.

. . . . . .

533. Baronum pars igitur jam pro se loquatur,
Et quo zelo ducitur rite prosequatur.
Que pars in principio palam protestatur;
Quod honori regio nihil machinatur.

. . . . . .

547. Regis adversarii sunt hostes bellantes
Et consiliarii regi adulantes
Qui verbis fallacibus principem seducant,

. . . . . .

587. Sive rex consenciens per seductionem,
Talem non percipiens circumvencionem,
Approbaret talia regni destructiva;
Seu rex ex malicia faceret nociva,
Proponeuda legibus suam potestatem,
Abutendo viribus propter facultatem;
Sive sic vel aliter regnum vastaretur

The regulations of the Provisions of Oxford were annulled by the "Dictum de Kenilworth" after the defeat and death of Simon de Montfort at Evesham, but it is evident that they were not forgotten, for the "Ordinances" of 1311 repeat the provision that the great officers of the country were to be appointed by the king, with the counsel and consent of the baronage.[1]

There are some interesting parallels to these English experiments to be found in Spain. From the proceedings of the Cortes of Cuéllar in 1297 it would appear that the repre-

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Aut regnum finaliter destitueretur,
Tunc regni magnatibus cura deberetur
Ut cunctis erroribus terra purgaretur.

. . . . . .

759. Unde si rex sapiat minus quum deberet
Quid regno conveniat regendo? Num quereet
Suo sensu proprio quibus fulciatur,
Quibus diminucio sua suppleatur?
Si solus elegerit, facile falletur,
Utilis qui fuerit a quo nescietur.
Igitur communitas regni consulatur,
Et quid universitas senciat, sciatur,
Cui leges proprie maxime sunt notæ;
Nec cuncti provinciæ sic sunt idiote,
Quin sciant plus ceteris regni sui mores,
Quos relinquunt posteris hii qui sunt priores,
Qui reguntur legibus magis ipsas sciunt,
Quorum sunt in usibus plus periti fiunt.

. . . . . .

777. Ex hiis potest colligi, quod communitatem
Tangit quales eligi ad utilitatem
Regni recte debeant; qui velint et sciant
Et prodesse valeant, tales regis fiant
Et conciliarii et coadjutores;

. . . . . .

803. Igitur eligere si rex per se nescit,
Qui sibi consulere sciant, hinc patescit
Quid tunc debet fieri; nam communitatis
Est ne fiant miseri duces dignitatis,
Regie, set optimi et electi viri.
Atque probatissimi qui possint inquiri.

. . . . .

843. Quia nulli hominum dicemus licere
Quicquid vult set dominum quemlibet habere,
Qui errantem corrigat, benefacientem
Adiuvat, et erigit quandoque cadentem.
Premio preferimus universatitem;
Legem quoque dicimus regis dignitatem
Regere, nam credimus esse legem lucem
Sine qua concludimus deviare ducem.

. . . . . .

871. Dicitur vulgariter: ut rex vult, lex vadit;
Veritas vult aliter, nam lex stat, rex cadit."

[1] 'Statutes of the Realm,' vol. i. p. 160.

sentation of the cities had, presumably at an earlier Cortes, appointed twelve "good men" to be with the king, who was a minor, and to counsel and serve him and the queen his mother, and his uncle, who was his guardian, and the king gives his consent to the arrangement.[1]

On the death of King Ferdinand IV. of Castile, his heir was again a child, and the Cortes of Palencia of 1313 not only elected his guardians, but also appointed a body of four prelates and sixteen knights and "good men" without whom nothing was to be done.[2] A similar arrangement was made by the Cortes of Burgos in 1315; they appointed twelve knights and "good men," six from the "fijos dalgo" and six knights and "good men" of the towns, to be continually with the king and his guardians, who should receive complaints when anything was done wrong in the country and see to it that the guardians put it right.[3]

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[1] 'Colecion de Cortes,' xxiii. 1: "Primieramiente que aquellos doce omes bonos que me dieron los delas villas del regno de Castiella para que finquen conmigo por los tercios del anno, para consejar e servir a mi e a la reyna mi madre, e al infante don Enrique mio tio e mio tutor, que en fecho de la justicia e de todas las rentas e de todo lo al que me dan los della tierra, e como se ponga en recabdo e se parta en lugar que sea mio servicio e amparamiento de la tierra, e en todas las otras cosas de fecho dela tierra que ovieren de ordenar que sean mio servicio e a pro e a guardamiento dela tierra, que me place que sean comigo e que tomen cuenta delo pasado."

[2] Id., 37, 4: "Otrosi ordinamos que porque nos ffuessemos poderosos e ssopiessemos e quessiessemos e podiessemos pararnos asservicio del rey é á pro delos rregnos, e porque nos oviessemos grand poder para obrar bien e nos pudiessemos ffazer danno del rey nin delos rregnos, que den quatro perlados e sseze caualleros e ommes bonos que scean nuestros consseieros, e que sse non pueda ffazer ssin ellos ninguna cosa; e estos perlados e sseze consseiros ssean escogidos quales deven sseer e non puestos a voluntad."

Cf. id. 36, 2: "Otrossi que ssean y diez e sses caualleros e ommes buenos delas villas de nuestro señor el rey en esta manera . . . (*i.e.*, four from Castile, four from Estremadura, four from Leon, and four from Andalusia).

. . . .

Et estos veynte caualleros e ommes buenos quelos escueja yo con acuerdo delos ommes buenos delas villas del rey. . . . Et estos que anden e ssean en guarda del rey, los diez la meatat del anno et los otros diez la otra meatat."

[3] Id., 38, 14: "Otrossi ordenamos que anden doze caualleros é omes buenos, los seys de los ffijos dalgo e los seys caualleros e ommes buenos de las villas con el rey é con los tutores en esta manera.

. . . .

It is no doubt true that these arrangements belong to troubled times during minorities, and that their significance must not be exaggerated, but the parallel to the "Provisions of Oxford" is remarkable.

These constitutional experiments are of great interest. It may, no doubt, be argued that in England they represent nothing more than the attempt of the baronage to establish their own control over the king and the country. We are, however, here not concerned with the question of their immediate conditions and causes; to us they are of the highest interest as representing some of the first attempts to devise a method by which the ruler might be compelled to carry out the law of the land, and be restrained within the limits of his authority by some method more normal and less revolutionary than the withdrawal of obedience or deposition. It was a long time before the principle of the responsibility of the ministers of the king to the community was fully established, but it was in that direction that these experiments looked, and they are therefore of great importance as representing an intelligible development of the mediæval principle of the limitation of the authority of the ruler.

Porque quando algunas cosas desaforadas ffizieren en la tierra, que aquellos a quien las ffizieren que lo enbien mostrar a estos caualleros é ommes buenos. Et ellos quelo muestren a los tutores, é los afruenten quelo ffagan emendar é desffazer."

CHAPTER IX.

THE DEVELOPMENT OF THE REPRESENTATIVE SYSTEM.

We hope that we have succeeded in making plain the main elements in the normal political principles and practice of the Middle Ages, and especially the principle that the law was the supreme authority in the political society, and that all other authorities were subordinate and subject to this; and that, so far as men conceived of the law as having any other source than the custom of the community, it was the community as a whole, the king, the barons, and the people. We have endeavoured in previous volumes to show that these principles can be traced throughout the whole of mediæval history, and in this volume we have, we think, said enough to make it plain that they were as clearly held in the thirteenth century as before.

It is true that the revival of the study of the Roman Law in the twelfth century had brought with it a new conception of the authority of the prince, and especially that of the prince as the source or fountain of law, and in a further volume we shall have to consider how far this may have contributed to the development of a new conception of monarchy. We have said enough, however, in this volume to make it plain that, as far as the thirteenth century is concerned, this conception was represented only in the purely academic discussions of some of the Bologna Civilians and in one or two quite abnormal political writers like Egidius Colonna. The normal conception was quite clear, that the law was supreme, over the prince as over all other members of the community, and that while the prince had his place, an important place, in the declaration and establishment of law, it was from the community as a whole that it proceeded.

It is not our part in this work to trace the development of the machinery of government in the Middle Ages, nor, indeed, is this necessary, for it has been handled with great learning by the constitutional historians. Our treatment of the principles of government would, however, be wholly inadequate if we were not, at this stage, to take account of their relation to that great system of the representation of the community which the Middle Ages created and handed down to the modern world. It is, indeed, a somewhat curious and even humorous thing to find, as we occasionally do, persons who claim to be attached to the traditional aspects of political institutions, criticising the representative system as though it were a modern thing, a product of some crude political idealism of the nineteenth century, or discussing the merits and demerits of a representative system upon merely abstract grounds. While all the time the truth is that the representative system was not only created when the civilisation of the Middle Ages was at its highest point, but that it was also the natural and logical outcome of its political conditions and ideas.

We must, therefore, briefly examine the nature and extent of this development in the thirteenth century, and must especially observe that it did not belong to any one western country, but was rather the common product of the common elements of political civilisation. It is no doubt also true that the representative system was founded upon traditions and methods of social organisation which can be traced far back into the earlier Middle Ages. For the discussion of this question we must refer our readers to the constitutional historians; we must confine ourselves in the main to the thirteenth century, and we can for that time consider it in relation to England, Spain, the Empire, and France.

The immediate circumstances out of which it arose varied in the different parts of Europe, but we venture to think that it will not be incorrect if we say that behind the particular and local conditions we can see the recognition of the need of a more effective organisation of the national determination and resources than the feudal system could furnish.

We have in a previous volume pointed out how the principle of the national, as distinguished from the merely feudal, relations of the people to the ruler expressed itself.[1] We venture to suggest that the development of the representative system was not only parallel to this, but was the intelligible form in which the national as distinguished from the merely feudal principle was embodied. For, if the king was to become the national sovereign, as distinguishable from the feudal lord, it was necessary that there should be developed some new organisation which should relate him to the whole body of his subjects, which should make his action powerful and effective as being founded upon the counsel and consent of the community as a whole.

This is, we venture to think, exactly what is expressed in the terms under which the first representative bodies were summoned in England. It was in the course of the great conflict between John and the barons that for the first time we find men who seem to have the character of representatives of the counties summoned to meet the king in November 1213, and it is noteworthy that they were summoned to discuss the affairs of the kingdom with the king.[2] We do not, indeed, know whether this meeting was ever held, but it is the principle of the summons which is to us important.

It was in the course of the long-drawn-out conflict between Henry III. and the barons that we find, in 1254, the second case of the summons of representatives of the counties to a council. And the writ of summons says expressly that two knights are to be chosen by each county to act in the place of all and each of the county. The purpose of the summons is that they should provide what "aid" (*i.e.*, "financial aid") they would render to the king.[1] In 1261 the barons summoned three knights from each county to meet them and to deal with the affairs of the kingdom, and Henry III., evidently anxious lest this should lend weight to the baronial party, instructed the sheriffs to see that these knights should not attend the council of the barons, but should come to him at Windsor, "colloquium habituros."[2]

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[1] Cf. vol. iii. part i. chap. 5.

[2] Select Charters, 'Summons to a Great Council,' A.D. 1213: "Rex vicecomiti Oxon Salutem . . . Præcipimus tibi quod . . . . quatuor discretos homines de comitatu tuo illuc venire facias ad nos ad eundem terminum ad loquendum nobiscum de negotiis regni nostri."

The further development of the principle of the representation of the community was brought about by the baronial party under the leadership of Simon de Montfort.

To the Parliament of 1264 were summoned, in addition to the prelates and "magnates," four knights elected by each county to deal with the affairs of the kingdom,[3] and in the Parliament of 1265 this system of representation was completed by the summons not only of the knights of the shire, but of representatives who were to be sent by the boroughs of the whole country; and these representatives were summoned in the same terms as the prelates and magnates, to deal with and give their counsel on the establishment of peace and other affairs of the kingdom.[1]

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[1] Id., 'Writ of Summons for Two Knights,' A.D. 1254: "Rex vicecomiti Bedeford et Bukingeham, Salutem. . . . Tibi districte precipimus, quod præter omnes predictos venire facias coram consilio nostro apud Westmonasterium in quindena Paschæ proximo futuri, quatuor legales et discretos milites de comitatibus predictis quos iidem comitatus ad hoc elegerint, vice omnium et singulorum eorundem comitatuum, videlicet duos de uno comitatu et duos de alio, ad providendum, una cum militibus aliorum comitatuum quos ad eundem diem vocare fecimus, quale auxilium nobis in tanta necessitate impendere voluerint."

[2] Id., 'Writ Summoning Three Knights,' A.D. 1261: "Rex vicecomiti Norfolchiæ et Suffolchiæ, salutem. . . . Tibi precipimus quod illis militibus de balliva tua, qui vocati sunt coram eis ad diem predictum, firmiter injungas ex parte nostra ut, omni occasione pontposita, ad nos die prædicto, veniant apud Windesoram, et eis etiam districte inhibeas ne dicto die alibi quam ad nos accedant, sed eis modis omnibus venire facias coram nobis ad diem predictum, nobiscum super præmissis colloquium habituros."

[3] Id., 'Writ for Conservation of the Peace, &c.,' A.D. 1264: "Et quia instanti parliamento nostro de negotiis nostris et regni nostri, cum prelatis, magnatibus et aliis fidelibus nostris tractare necessario nos oportebit, vobis mandamus quatenus quatuor de legalioribus et discretioribus militibus dicti comitatus, per assensum ejusdem comitatus ad hoc electos, ad nos pro toto comitatu illo electos mittatis. . . . Nobiscum tractaturi de negotiis predictis."

It was the great merit of Edward I. that he recognised that a method which had grown up in revolutionary times, and had been last used by the opponents of the king, was really that which was best adapted to consolidate the unity of the kingdom and to increase its effective power. The terms under which he summoned the representatives of the counties or boroughs express very clearly the conception that it was desirable in important matters to take counsel with and seek the assistance, political and financial, of the whole community.

In 1282, in connection with the Welsh War, he summoned the knights of the shires and the representatives of the boroughs who were to have the full authority of the counties they represented, to hear and take action upon those matters which he should lay before them.[2] The summons of representatives of London and a number of other cities in 1283 especially states that the purpose of this gathering was to consult with the king's faithful men what was to be done with David of Wales.[3] In 1290 the knights of the shire were summoned to consider and consent to that which was agreed to by the lords and barons.[1] In 1294 the knights of the shires were again summoned in almost the same terms.[2] The summons to the Parliament of 1295 only expresses the same principle in larger and more complete terms. The bishops and representatives of the lesser clergy were summoned "ad tractandum ordinandum et faciendum nobiscum et cum ceteris prelatis et proceribus et aliis incolis regni nostri qualiter sit hujusmodi periculis et excogitatis malitiis obviandum." The earls and barons were summoned in the same terms. The representatives of the counties and burghs were summoned in terms which express very emphatically the principle that they were to have full powers to act for the communities which they represented, and to accept the decisions which should be made by the whole assembly.[3] The stress laid upon the principle that the representatives of the counties and boroughs were to receive complete authority from the communities which they represented, and that it was by the common counsel that all determinations were to be made, are of the highest significance. When we take account of this we shall understand that the citation, in the writ of summons to the Archbishop of Canterbury and the other bishops and clergy, of the words of Justinian, that what concerns all should be approved by all, must not be taken as a mere literary phrase, but rather as the embodiment of a general principle which underlies the whole constitutional development.[1]

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[1] Id., 'Summons to the Parliament of 1265,' A.D. 1264: "Henricus, Dei gratia Rex Angliæ. . . . Venerabili in Christo patri Roberto, eadem gratia Episcopo Dunelmensi Salutem. . . . Vobis mandamus . . . quod omni occasione postposita . . . sitis ad nos Londoniis in octavis Sancti Hilarii proximo futuris, nobiscum et cum predictis prelatis et magnatibus nostris quos ibidem vocari fecimus super premissis tractaturi et consilium vestrum impensuri . . . . . .

Item mandatum est singulis vicecomitibus per Angliam quod venire faciant duos milites de legalioribus, probioribus et discretioribus militibus singulorum comitatuum ad regem Londiniis in octavis predictis in forma supradicta.

Item in forma prædicta scribitur civibus Eboraci, civibus Lincolniæ, et ceteris burgis Angliæ, quod mittant in forma predicta duos de discretioribus, legalioribus et probioribus tam civibus quam burgensibus."

[2] Id., 'Writ of Summons of Knights of the Shire,' A.D. 1282: "Et quatuor milites de utroque comitatuum predictorum pro communitatibus eorundem comitatuum habentes plenariam potestatem; et de qualibet civitate, burgo, villa mercatoria, duos homines similiter potestatem habentes pro communitatibus eorundem, ad audiendum et faciendum ea quæ sibi ex parte nostra faciemus ostendi."

[3] Id., 'Summons of Borough Members,' A.D. 1283: "Et quia cum fidelibus nostris volumus habere colloquium, quid de David fieri debeat memorato . . . vobis mandamus quod duos de sapientioribus et aptioribus civibus predictæ civitatis eligi faciatis, et eos ad nos mittetis. . . . Nobiscum super hoc et aliis locuturi."

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[1] Id., 'Summons of Knights of the Shire,' 1290: "Cum per comites, barones, et quosdam alios de proceribus regni nostri, nuper fuissemus super quibusdam specialiter requisiti, super quibus, tam cum ipsis quam cum aliis, de comitatibus regni illius colloquium habere volumus et tractatum, tibi precipimus quod duos vel tres de discretioribus, et ad laborandum potentioribus, militibus de comitatu prædicto, sine dilatione eligi, et eos ad nos usque Westmonasterium venire facias, ... cum plena potestate pro se et tota communitate comitatus predicti, ad consulendum et consentiendum pro se et communitate illa hiis quæ comites, barones et proceres predicti, tunc duxerint concordanda."

[2] Id., A.D. 1294.

[3] Id., 'Summons of Representatives of Shires and Towns,' A.D. 1295: "Rex vicecomiti Norhamtesiræ. Quia cum comitibus, baronibus, et ceteris proceribus regni nostri, super remediis contra pericula quæ eidem regno hiis diebus imminent providendum, colloquium habere volumus et tractatum, per quod eis mandavimus quod sint ad nos die Dominica proxima post festum Sancti Martini in hyeme proxime futurum apud Westmonasterium, ad tractandum, ordinandum et faciendum qualiter sit hujusmodi periculis obviandum; tibi præcipimus firmiter injungentes, quod de comitatu prædicto duos milites et de qualibet civitate ejusdem comitatus duos cives et de qualibet burgo duos burgenses, de discretioribus et ad laborandum potentioribus, sine dilatione eligi, et eos ad nos ad prædictos diem et locum venire facias; ita quod dicti milites plenam et sufficientem potestatem pro se et communitate commitatus predicti, et dicti cives et burgenses pro se et communitate civitatum et burgorum predictorum divisim ab ipsis tunc ibidem habeant, ad faciendum quod tunc de communi consilio ordinabitur in premissis; ita quod pro defectu hujusmodi potestatis negotium predictum infectum non remaneat quoquo modo."

We have dealt first with the development of the representative principles and methods in England, but we must be careful to observe that this took place in Spain even earlier than in England, and was not less important. As we have seen in an earlier chapter, it was in and with the councils of the prelates and great men that the kings of Leon legislated or declared the customary law.[2] In the proceedings of the Council of Leon, held in 1188, we first find a contemporary and explicit reference to the presence of elected representatives of the cities of Leon as members of the council, and the king promises that he would neither make war nor peace nor any "placitum" without the counsel of the bishops, nobles, and "good men" by whose counsel he ought to be ruled.[3]

The presence of representatives of cities is indicated in the proceedings of the Council of Benavente in 1202, and in the

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[1] Id., 'Summons of Archbishop and Clergy,' A.D. 1295: "Rex venerabili in Christo patri Roberto eadem gratia Cantuarensi Archiepiscopo totius Angliæ Primati, Salutem.

Sicut lex justissima, provida circumspectione sacrorum principum stabilita, hortatur et statuit ut quod omnes tangit ab omnibus approbetur ('Cod.', v. 59, 5) sic et nimis evidenter ut communibus periculis per remedia provisa communiter obvietur."

[2] Cf. p. 61.

[3] 'Colecion de Cortes,' vii.: "Ego, dominus Aldefonsus, rex Legionis et Gallicisæ, cum celebrarem curiam apud Legionem cum Archiepiscopis et episcopis et magnatibus regni mei et cum electis civibus ex singulis civitatibus, constitui et juramento firmavi, quod omnibus de regno meo, tam clericis quam laicis, servarem mores bonos, quos a predecessoribus meis habent constitutos. . . . 3. Promisi etiam, quod nec faciam guerram vel pacem vel placitum, nisi cum concilio episcoporum, nobilium, et bonorum hominum, per quorum concilium debeo regi."

Council of Leon in 1208, and it is specially mentioned in the latter case that the law issued by the king was made with the consent of all.[1] In the proceedings of the Council of Valladolid of 1258, we find the "good men" of the cities of Castile, Estremadura, and Leon present along with the bishops and "rricos ommes," and the king again gives his authority to that which they had established.[2] The representatives of the cities appear again in the proceedings of the Cortes of Valladolid of 1295 and 1299, of Burgos in 1301 and of Illescas in 1303.[3] In the proceedings of the Cortes of Medina del Campo, 1305, we have a detailed statement that the king had instructed each "conçeio" to send two representatives who should bring a carta de "personeria" (presumably a document showing that they had been appointed representatives), and these representatives are described as the knights and good men who came to the Cortes "por personeros de los conceios" of the cities and "villas" and "logares" of Castile. The purpose of the summons is described as being, to discuss with the king various matters concerning the service of God and the good of the kingdom.[4] In the proceedings of the Cortes of Palencia of 1313 the representatives of the cities are described as good men, "personeros" of the "conceios" of the "villas" and "logares" of Castile who brought "cartas de personeria."[1] In the proceedings of the Cortes of Burgos of 1315, they are described as "procuradores delos çibdades é delas villas del sennorio del dicho sennor."[2]

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[1] Id., viii. 1: "Idcirco ego Adefonsus Dei gratia Rex Legionis et Galletie, cum uxore mea. . . . Per hoc notum facio vobis universis presentibus et futuris, quod me existente apud Beneventum et presentibus episcopis et vassallis meis et multis de qualibet villa regni mei in plena curia."

Id., ix.: "Mense Februario convenientibus apud Legionem, regiam civitatem, una nobiscum venerabilium episcoporum cetu reverendo, et totius regni primatum et baronum glorioso colegio, civium multitudine destinatorum a singulis civitatibus considente. Ego Alfonsus illustrissimus rex Legionis, Galecie, et Asturiarum et Estrematuræ, multa deliberatione prehabita de universorum consensu hanc legem edidi a meis posteris observandam."

[2] Id., xiii.: "Don Alfonso. . . . Salut e gracia. Sepades que yo ove mio acuerdo e mio conseio con mios hermanos los Arcobispos e con los Obispos e con los rricos ommes de Castiella e de Leon e con ommes bonos de villas de Castiella e de Extremadura e de tierra de Leon que fueron comigo en Valladolit, sobre muchas cosas sobeianas que se fazien que eran a danno de nos e de todo mi tierra, e accordaren delo toller e de poner cosas sennaladas e ciertas, porque biuades. Et lo que ellos pusieron otorqué yo delo tener e delo fazer tener e guardar por todos mis rregnos."

[3] Id., 24, 25, 27, and 30.

[4] Id., 31: "Bien ssabidos commo uos enbié mandar por mi carta que enbiassedes ami dos omes bonos de vuestro conceio con vuestra carta de personeria a estos cortes que agora ffize en Medina del Campo; eso mismo enbié mandar alos otros conceios del

It is thus clear that by the end of the twelfth century in Leon, and in the course of the thirteenth century in Castile, the representatives of the cities were regular members of the Cortes, and that they were appointed and sent by the cities. It is also clear that the Cortes were meeting frequently, and it is noteworthy that at the Cortes of Palencia, 1313, it was laid down that the guardians of the king, who was a minor, were to call together the Cortes every second year, and that, if they did not do this, the Cortes were to be summoned by the council of four prelates, and sixteen knights and "good men" who had been appointed to act with the guardians.[3]

It is no doubt true that it is in Spain and England that we find the chief development of the attempt to provide some system by means of which the whole community might in some measure take its place in the control of government, but it is clear that the same thing was taking place throughout Western Europe. We find Rudolf of Hapsburg in his instructions in 1274 to the Archbishop of Salzburg and the

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rregno de Leon e de toda la otra mi tierra, por que auia de ffablar con ellos muchos cossas que son aservicio de Dios e mio e pro de toda la tierra. Et uos enbiastes a mi a Johan Nicolas e Alffonso Yannez uestros bezinos e gradescouoslo mucho."

Id., 32: "Et los cavalleros et los omes buenos que vinieren a estas cortes por personeros de los conceios de las cibdades e de las villas e de las logares de Castiella e de las marismas."

[1] Id., 37: "Omes bonos, perssoneros de los conceios de las villas e delos logares delos rregnos de Castiella, etc., con cartas de personeria delos conceios."

[2] Id., 38.

[3] Id., 37, 11: "Otrosi ordenaron que daqui adelante en todo tiempo sseamos tenudos cada dos annos de ffazer llamar cortes generales entre Ssant Miguel e todos Ssantos a un logar convenible para auer e ssaper commo obramos el tienpo pasado; et ssi pora auentura nos non quissiessemos llamar las cortes, los perlados e los consseiros en nonbre del Rey ffagan llamar las Cortes e que sseamos tenudos al llamamiento dellos o de qual quier dellos de venir a estas Cortes."

Cf. Id., 37, 4.

Bishops of Passau and Regensburg authorising them to take into their counsels not only the lords and barons, but also the citizens and communities of the cities, on all matters which concerned the wellbeing and reformation of the empire.[1] In the same year he summoned a general council or "Curia" of the empire, in terms very similar to those of Edward I. in 1295—"ut quæ singules tangere noscitur, ita a singulis approbetur," and it is evident from another document that among those summoned to the Curia were persons to be sent by the city of Lübeck.[2]

Many years before this, indeed, we find Frederick II. in 1231 summoning Siena and each of the Tuscan cities to elect and send representatives to a council to be held in April, with full authority from those who sent them to accept, what should be decided by the counsel of all, on behalf of those whom they represented.[3] Later in the same year we find

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[1] M. G. H., 'Const.,' vol. iii. 67: "Sane cum pro reformacione Romani Imperii tractatus varii et diversi cum diverse condicionis hominibus necessario sint habendi, quibus omnibus propter locorum distancias et plures importunitates alias, quas portamus, personaliter non possumus interesse, vobis et cuilibet vestrum in solidum comittimus, et committendo precipimus per presentes, quatenus cum baronibus, comitibus, liberis ministeralibus, militibus, civibus et communitatibus civitatum vestræ provinciæ super hiis, que ad utilitatem et reformacionem imperii necnon ad commodum et honorem eorum, qui vobiscum de hujusmodi colloquientur, poterunt pertinere, quociens utile vobis visum fuerit, nostro et Romani imperii nomine conferatis, tractetis, statuatis et ordinetis, prout vobis suggesserit fides vestra."

[2] Id. id., vol. iii. 56: "Verum quia non est in rerum natura possibile quod substancia corporis universi a capite sine membrorum subvencione regatur, interdum cogimur alios in comportacionis hujus participatium evocare. Hinc est quod, cum pro reformacione collapsi status imperii et communi tranquillitate fidelium apud talem locum in instanti proximo festo tali, curiam generalem duximus educendam, sinceritatem tuam attencius invitamus, rogantes pariter . . . quatenus omni difficultate remota, predicte curie celebracioni presencialiter studeas interesse, ut quæ singulos tangere noscitur, ibi a singulis approbetur."

Id. id., 58: Letter of Rudolph to all Princes and "Fideles"; they are to give safe conduct to any that are sent by the citizens of Lübeck to attend the "Curia."

[3] Id. id., vol. ii. 152 (Letter to Podesta and the Council and Commune of Siena): "Cum igitur pro hiis omnibus efficaciter disponendis necessarium sit et decens, ut de qualibet civitatum Tuscie, sollempnes nuncios habeamus, universitati vestre sub debito fidelitatis qua nobis et imperio tenemini, precipiendo mandamus, quatinus electos de communitate vestra viros providos et discretos ad nostram presentiam transmittatis, plenam sibi

Frederick announcing to the Podesta and the Commune of Genoa that he proposed to hold a Curia in November to consider the conditions, and to set forward the peace of the empire, with the counsel of the Pope, the princes, and his faithful men. He therefore required them in the name of their fidelity to the empire to elect suitable men of their commune, and to send these along with the Podesta to the Curia at Ravenna, with full authority to take part in the deliberations and to carry out what should be decided by the general council.[1] It may no doubt be said that in these summons we are dealing with the political and diplomatic methods by which Frederick was endeavouring to strengthen his position in Italy rather than with the development of constitutional institutions, but even if this is so, the use of an elective and representative machinery is important.

Frederick also made at least experiments in the kingdom of Sicily with representative methods both for the kingdom as a whole, and for its various provinces.[2]

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auctoritatem universaliter conferendo ut ea, que de consilio ipsorum et alioum qui aderunt de predictis omnibus, viderimus statuenda, per se valeant acceptare, et quod a vobis acceptari et inpleri debeant, que promittunt."

[1] Id. id., vol. ii. 155: "Nos enim cum omni serenitate cordis et corporis ad ipsius celebritatem curie, auctores pacis noveritis advenire, pro dispositione status imperii et dissensionibus amovendis, cum consilio summi pontificis, assistentia principum et nostrorum provisione fidelium procedere proponentes. Quapropter universitati vestræ sub debito fidelitatis quo nobis et imperio tenemini, firmiter precipiendo mandamus, quatenus eligatis de comuni vestro viros industrios et peritos, quot et quales videritis expedire, una cum potestate vestra mittendos ad Ravennensem Curiam pretaxatam, qui veniant omnium vestrum auctoritate providi concilii moderatione subfulti, qua sufficienter valeant nostris colloquiis et ordinationibus interesse, prudentia et virtute conspicui, ut quod de promotione status imperii et tranquillitate totius Italiæ fuerit per generale colloquium approbatum, pro parte sua et nostra sciant et possint diligenter implere."

[2] Richard de St Germano, 'Chronicle,' A.D. 1232: "Mense Septembri Imperator a Melfia venit Fogiam et generales per totum regnum litteras dirigit, ut de qualibet civitate vel castro duo de melioribus accedant ad ipsum pro utilitate regni et commodo generali."

Id. id., A.D. 1234: "Statuit etiam ipse imperator apud Messanam, bis in anno in certis regni provinciis generales curias celebrandas . . . et ibi erit pro parte imperatoris nuntius specialis . . . iis curiis, bis in anno, ut dictum est, celebrandis, intererunt quatuor de qualibet magna civitate de melioribus terræ, bonæ fidei et bonæ opinionis, et

Finally, it was in 1302 that Philip the Fair called together the first States General of France, and these were composed not only of the prelates and magnates in person, but of representatives of the towns of the kingdom, who were to have full powers from the various bodies which they represented.[1]

We think that these illustrations of the development of the representative system in the thirteenth century will be sufficient to prove its importance, and to make it plain that this was not an accidental or isolated phenomenon, due to conditions peculiar to England or to any other country, but rather represents the operation of forces and tendencies which belonged to the whole of Central and Western Europe. It is no doubt true that in each particular country we can in some measure trace particular circumstances or conditions

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qui non sint de parte; de aliis vero non magnis et de castellis duo intererunt curiis ipsi."

Cf. Pietro Giannone, 'Istoria Civile del Regno di Napoli,' ed. Milan 1821, vol. iv. pp. 475, &c.

We owe the reference to Stubb's 'Constitutional History,' vol. ii. par. 183.

[1] 'Documents relatifs aux Etats Generaux et Assemblées réunie sous Philippe le Bel,' ed. G. Picot, i.: "Philippus . . . senesoallo Bellicadri . . . salutem. Super plurimis arduis negociis, nos, statum, libertatem nostros, de regni nostri, nec non ecclesiarum, ecclesiasticarum, nobilium, secularium personarum, de universorum et singulorom incolarum regni eiusdem, non mediocriter tangentibus, cum prelatis, baronibus et aliis nostris et eiusdem regni fidelibus et subiectis, tractare et deliberare volentes, mandamus vobis quatinus consulibus et universitatibus Nemausensi, Uticeusi, Aniciensi, Mimatensi et Vivariensi, civitatum ac villarum Montis-Pessulani et Bellicadri mandetis ex parte nostra ac precipiatis, sub debito fidelitatis et quocumque vinculo quo nobis tenentur astricti, ut dicti consules et universitates civitatum et villarum predictarum, per duos aut per tres de maicribus et pericioribus singularum universitatum predictarum, plenam et expressam potestatem habentes, inter cetera, a consulibus et universitatibus prodictis, audiendi, recipiendi, et faciendi omnia et singula, ac concenciendi, absque excusatione relationis cuiuslibet faciendi, in omnibus et singulis quæ per nos in hac parte fuerint ordinata, postpositis omnibus aliis et obmissis, excusatione et occasione quibuscumque cessantibus, hac instanti die dominica ante Ramos palmarum intersint Parisiis, nobiscum tractaturi et deliberaturi super hiis, audituri, recepturi ac facturi omnia et singula, suumque, nomine consulum et universitatum predictarum, prebituri asensum in omnibus et singulis que super premissis et ea tangentibus per nos fuerint ordinata; intimantes eisdem quod nisi, juxta mandatum huiusmodi, comparuerint coram nobis, procedetur contra illos, prout fuerit rationis."

out of which the representative system immediately arose, but it is highly improbable that it was by a mere coincidence that in all these countries the conflicts and difficulties of the time should have brought about the same development. It is much more reasonable to recognise that the rise of the representative system was the intelligible and logical development of the fundamental principles of the political civilisation of the Middle Ages.

CHAPTER X.

THE THEORY OF THE EMPIRE.

In the third volume of this work we dealt with the conception of a universal empire in the eleventh and twelfth centuries, and we came, then, to the conclusion that while the tradition of a universal empire was not dead, yet it is impossible to say that it had any real part in determining men's actions or the principles and theory of the structure of society. We must now inquire whether it had any place in the political theory of the thirteenth century.

We shall again find that the conception of the emperor as the lord of the world, as set over all kings and other political authorities, is found occasionally in certain writers, especially in some of the Civilians and at least in one Canonist. That eminent Civilian, Odofridus, to whom we have often referred, says in his comment on the rescript of Justinian which was prefixed to the 'Digest,' that the Roman prince is called the emperor, for he should be able to rule as emperor over all who dwell under the sun.[1] He was not apparently able to say that the emperor did exercise this authority, but he thought that he should properly be able to do so.

Boncompagni, in his 'Rhetorica Novissima,' written in 1235, enumerates various forms under which the emperor should be approached. In one the emperor is addressed as that imperial majesty who, under the providence of God, possesses the monarchy of the whole world; in another as the emperor and Augustus who controls the whole world with the bridle of law and justice; in another, as that authority by whom kings reign and justice is preserved in the world, and to whom the Lord has given the power of the temporal sword.[1]

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[1] Odofridus, 'Commentary on Digest,' Prima Const., i. 1 (fol. 2, 2): "(Imperator) Quia princeps Romanorum vocatur Imperator: quia ipse est qui omnibus subsistentibus sub sole debet posse imperare: et nemo sibi imperare potest quantum ad temporalia."

These phrases are the expression of the traditional conception of the imperial authority of Rome, and are very natural in those who were legally subject to the emperor.

Somewhat analagous to these are the terms used occasionally in the imperial constitutions. In one of these Frederick II. speaks of himself as being placed by God over kings and kingdoms.[2] In 1239 Frederick issued his Encyclical Letter protesting against the action of Gregory IX. in stirring up the Milanese and his other enemies against him. He concludes the form of the Encyclical which was addressed to the Germans, by adjuring them to remember the greatness and dignity of that empire on account of which they were envied by all nations, and in virtue of which they held the monarchy of the world.[3] It is noticeable that he does not use these terms in the form of the same Encyclical addressed to Henry III. of England.

More important, however, than these is the judgment expressed more than once by the great Canonist to whom we have frequently referred, the Bishop of Ostia. In one very important passage in the 'Summa Decretalium,' he discusses with great care the relation of the imperial to the papal authority (to this we shall return later), and while he asserts the immense superiority of the spiritual as compared with the temporal power, he also asserts that the emperor is the lord of the world and that all nations are under him.[1] That this is not a mere chance phrase would appear from the fact that in another work, the 'Commentary' on the Decretals, in dealing with another passage, he again expresses the same judgment.[2]

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[1] Boncompagni, 'Rhetorica Novissima,' v. 4: "Quatuor exordiorum varietates quæ pro cunctis et singulis valent coram imperatoria magistate preponi. . . . (2) Imperiali majestati que disponente domino totius orbis obtinet monarchiam. . . . (4) Romanorum imperatori et semper Augusto, qui orbem terrarum juris et justitiæ freno constringit. . . . Duae varietates exordiorum quibus pauper uti valet coram imperatore. (1) Ad illum per quem Reges regnant, justitia conservatur in terris, et cui a Domino collata est potestas gladii temporalis."

[2] M. G. H., Const., vol. ii. 197: "Gloriosus in majestate sua dominantium dominus qui regna constituit et firmavit imperium. . . . Ad hoc nos supra reges et regna preposuit, et in imperiali solio sublimavit."

[3] Id. id., vol. ii. 224: "Exurgat igitur invicta Germania, exurgite populi Germanorum. Nostrum nobis defendatis imperium, per quod invidiam omnium nationum, dignitatum omnium et mundi monarchiam obtinetis."

This would be of considerable significance if we could take it as representing the general opinion of the Canonists and ecclesiastical writers, but this is not the case. Innocent III. in the Decretal letter 'Per Venerabilem' not only says that the King of France recognised no superior in temporal matters, but founds upon this the conclusion that, if the king desired it, he could refer a question about himself to the judgment of the Pope.[3] Pope Innocent IV., in his 'Apparatus' to the Decretals, says that some men (Canonists presumably) maintained that kings were not subject to the emperor but only to the Pope.[4]

William Durandus, the most important Canonist and Civilian of the last part of the century, sets out quite definitely the opinion that there was no appeal from a judgment of the Court of France, for the French king recognised no superior in temporal matters; he is citing the authority of Innocent III., but speaks of this legal principle as one which was in fact observed.[1]

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[1] Hostiensis, 'Summa super titulos decretalium.' 'Qui filii sunt legitimi,' 13: "Ipse (Imperator) est mundi dominus, et omnes nationes sub eo sunt."

[2] Id., 'In Decretalium libros commentarius,' i. 6, 34, 'De Electione': "(6) Unus enim est imperator super omnes reges, vii. q. 1 in apibus (Gratian, Decretum, C. vii. 1, 41), et omnes nationes sub eo sunt xi. q. 1. hanc si quis, ver. volumus (Gratian, Decretum, C. xi. 1, 36, 37). Etiam Judæi ut C. de Judæis, Judæi (Code i. 9, 8). Et omnes provinciæ 63. Dist. Adrianus (Gratian, Decretum, D. 63, 2). Et demum omnia temporalia ut viii. Dist. quo jure (Gratian, Decretum, D. viii. 1)."

[3] 'Decretals,' iv. 17, 13: "Insuper cum rex (*i.e.*, the King of France) superiorem in temporalibus minime recognoscit, sine juris alterius lesione, in eo se jurisdictioni nostræ subjicere potuit."

[4] Innocent IV., 'Apparatus ad quinque libros Decretalium,' ii. 27, 23: "Alii tamen dicunt quod reges omnes in integrum restituunt, quia non sunt sic imperatoribus subditi, sed papæ soli in dubiis et gravibus articulis, si j̄. qui fil. sint legiti, c. per venerabilem" ('Decretals,' iv. 17, 13).

Cf. App. iv. 17, 13: "(Recognoscat) de facto, nam de iure subest Imperatori Romano, nos contra, immo Papæ."

It would appear then that, except for Hostiensis, the opinion of the Canonists of the thirteenth century was clearly against the theory of a political authority of the emperor over all other rulers. We have indeed found only one other ecclesiastical writer of the time of whom it can be said that he seems to hold that the emperor had this authority. This is the author of a tract written to support Boniface VIII. against Philip the Fair of France. He says that all kings and princes acknowledge that they are subject to the emperor in temporal matters, and they must therefore admit that they are "mediately" subject in these to the Pope, for the empire is held from him; and, he adds, if they refuse to acknowledge that they are subject to the emperor, they must then admit that they are directly subject to the Pope in temporal things.[2] We shall return in a later chapter to this writer's treatment of the temporal authority of the Pope.

Perhaps the most suggestive treatment of the subject is that of Andrew of Isernia in his 'Commentary on the Constitutions of the Kingdom of Naples.' The king, he says, who is monarch in his own kingdom makes laws even contrary to the positive law; but what, he asks, are these "universitates" which have jurisdiction, since the emperor is lord of all the world? He replies that they are kings who are free and exempt from the authority of the empire, as, for example, the King of Sicily, who holds from the Roman Church; and he seems to mean that this exemption was due either to long prescription, or to the grant of the emperor. Having thus explained the origin of this position, he sets out dogmatically the principle that every king, who is thus free from the empire, occupies the same position in his kingdom that the emperor does in his empire; the king is monarch in his kingdom. The king who is free from the empire has his own "fiscus," as the King of England, the King of Italy, and the King of Lombardy.[1]

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[1] William Durandus, 'Speculum,' ii. partic iii.: 'De Appellationibus' 'a quibus appellari possit,' p. 481: "Item a sententia lata in curia Franciæ non appellatur, cum rex ipse in temporalibus non recognoscat, ut extra, qui filii sunt leg. c. per venerabilem ('Decretals,' iv. 17, 13) et sic ibi de facto servatur."

[2] Anonymous fragment (ed. R. Scholz) in 'Die Publizistik,' p. 475: "Item universi reges et principes fatentur se imperatori Romano subesse quantum ad temporalia . . . et tunc non poterant negare quin etiam subsunt Pape in temporalibus mediate, cum imperium teneatur ab eo, et ipse confirmat ejus electionem et coronam imperii concedit, etiam ipse imperator jurat sibi fidelitatem. . . . Si enim noluerint confiteri se subesse imperatori, necessarie habent confiteri se subesse pontifici Romano in temporalibus."

It would seem that Andrew of Isernia, who was presumably a Civilian by training, was already attempting to find a solution of the problem how the actual independence of various European States could be reconciled with the standpoint of the Roman law. The most important point, however, of his statement is that there were independent kingdoms which were not under the empire.

With Andrew of Isernia we may compare the terms of the great eulogy of the 'Empire,' written by Jordan of Osnabrück in the latter part of the thirteenth century. He had the highest reverence for the Roman Empire, which was now held by the German nation, and solemnly warns the Romans and the Pope, as well as the German princes, of the great dangers which would be brought upon the world if the empire were to be destroyed, and he says that the authority of Cæsar was above all other earthly authorities, and contained them all.[1] In a later chapter of the same work, however, he gives, in a passage already cited, a curious account of the creation of the French kingdom by Charlemagne. He says that this kingdom, in contrast with the empire, was to be hereditary, and that the king was not to recognise any superior in temporal things.[2]

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[1] Andreas de Isernia, 'Peregrina,' fol. 3, v.: "Cum constitutiones regni faciat quilibet rex monarcha in regno suo; etiam contra legem positivam. . . . Sed quæ sunt universitates habentes jurisdictionem, cum imperator sit dominus totius mundi? . . . Idem liberi reges et exempti ab imperio, ut rex Siciliæ, quam habet a Romana ecclesia, sunt monarchæ in regnis suis . . . . cum sine hujusmodi prescriptione vel principis Romanorum concessione reges alii non haberent aliqua regalia in terris et regnis suis, nec monete faciende. . . . fol. 7, v. equiparetur rex in regno suo imperatori in imperio suo. . . . Item dicimus de omni rege libero ab imperio sicut est regnum Siciliæ. . . . Rex regni sui monarcha est. . . . Item diximus regem ab imperio liberum habere fiscum sicut imperator . . . . Rex Angliæ fiscum habet. . . . Reges Longobardie dicunt se habere . . . hoc idem dicit Rex Siciliæ."

The French writers of the thirteenth century repudiate emphatically the conception that the emperor had any authority in France. The author of the very interesting tract, in the form of a discussion between a knight and an ecclesiastic, written in the course of the conflict between Boniface VIII. and Philip the Fair of France, says dogmatically that no one can make laws for those over whom he has no "dominion," and that therefore the French cannot make laws for the empire, nor the emperor for the King of France.[3] And in another place he develops more fully still the principle that the true dignity and authority of the King of France is the same as that of the emperor, and contends that when the Empire of Charles the Great was divided, the kingdom of France retained the same powers as that part which had the name of the Empire.[4]

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[1] Jordan of Osnabrück, 'Tractatus de Prerogativa Romani Imperii,' i.: "Ostendit enim potestatem Cesaris aliis potestatibus mundanis præ.eminere et ipsas sub eo contineri."

[2] Id. id., v.: "Porro, quia ipse Karolus Rex Francorum extitit et illud regnum ad eum fuerat ex successione devolutum, impium fuisset et indecens, quod ipse suos heredes dignitate regia penitus denudasset. Statuit igitur . . . ut Francigene cum quadam regni Francorum portione regem haberent de regali semine jure hereditario successurum, qui in temporalibus superiorem non recognosceret, cui videlicet tamquam imperatori posteritas ad homagium vel aliquod obsequium teneretur."

[3] 'Disputatio inter clericum et militem,' p. 75: "Nullus enim potest de iis statuere, super quæ constat ipsum dominium non habere. Sic nec Francorum rex potest statuere super imperium, nec imperator super regem Franciæ."

[4] Id., p. 80: "Cler.: Imperatores sanxerunt ista non reges, et ideo per bonos imperatores, o miles, nunc erit legum gubernacula moderari.

"Mil.: Hoc responsum est blasphemiæ. Et quoniam, ut videtur, aut originem ignoratis regni aut quod videtur verius, illius altitudini invidetis, si Caroli Magni registrum inspiciatis et historias probabilissimas revolvatis: invenietis quod regnum Franciæ dignissima conditione imperii portio est, pari divisione ab eo discreta, et equali dignitate et auctoritate quingentis annis circiter insignita; quicquid ergo privilegii et dignitatis retinet

John of Paris, writing on the same conflict, admits that there should be one spiritual head of the world, and that Peter and his successors held that place, not by the authority of some council, but by the institution of Christ Himself; but, he continues, this is not true in temporal matters, for there is no Divine law that the lay people should be subject in temporal things to one monarch.[1] It is true that in one place he uses a phrase which is a little ambiguous. The king, he says, is supreme in his kingdom, and the emperor, if he were monarch, would be lord of the world.[2] It is not very easy to say what John means. That he does dogmatically repudiate any claim to superiority on the part of the emperor in France is, however, clear from a later passage in which he discusses the "Donation" of Constantine—we shall return to this in a later chapter; he argues that, whatever may be the validity of the donation, it has no reference to France, for the Franks were never under the domination of the Roman Empire.[3]

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imperii nomen in parte una, hoc regnum Franciæ in alia. Cum enim fraterna divisione, Francorum regnum a reliqua parte discessit imperii, quicquid in parte decedente et penitus ab imperio existente, imperium ipsum quondam obtinuit, aut ibidem jure altitudinis aut potestatis exercuit, hoc principi seu Francorum regi in eadem plenitudine cessit. Et ideo sicut omnia infra terminos imperii sunt, subjecta esse noscuntur imperio, sic quæ infra terminos regni, regno. Et sicut imperator supra totum imperium suum habet leges condere, addere eis, aut demere: sic et Rex Franciæ, aut omnino leges imperatorias repellere, aut quamlibet placuerit permutare, aut, illis a toto regno suo prescriptis et abiectis, novas si placuerit promulgare. Alioquin si aliquid novi, ut saepe accidit, visum fuerit statuendum, si rex non posset hoc qui est summus: tunc nullus poterit, quia ultra eum non est superior ullus. Et ideo, domine clerice, linguam vestram coercite et agnoscite regem legibus, consuetudinibus et privilegiis vestris, et libertatibus datis, regia potestate præ.esse, posse addere, posse minuere quælibet, equitate et ratione consultis, aut cum suis proceribus, sicut visum fuit temperare."

[1] John of Paris: 'Tractatus de Potestate Regia et Papali,' iii.: "Non sic autem fideles laici se habent ex jure divino, quod subsint in temporalibus uni monarchæ supremo."

[2] Id. id., 19: "Non est autem caput (*i.e.*, the Pope) quantum ad regimen in temporalibus seu dispositione temporalium, sed quilibet rex est in hoc caput regni sui, et imperator monarcha si fuerit, est caput mundi."

[3] Id. id., 22: "Tertio apparet, quod ex dicta donatione nihil habet papa super regen Franciæ, dato etiam quod voluisset, et generalis de toto imperio fuisset: quia licet Gallici inveniantur tempore Octaviani Augusti imperio Romano fuisse subiecti, tamen Franci nunquam."

The position of France is clear, and we can now observe that the position in Spain was the same. In one place in the 'Siete Partidas' Alfonso X. uses the highest language to describe the dignity of the emperor, and his place as the vicar of God in the empire to do justice in temporal matters, as the Pope is God's vicar in spiritual things.[1] A little farther on, however, he uses practically the same terms to describe the dignity of the king; he also is the vicar of God in his kingdom, to maintain justice and truth in temporal things as the emperor does in the empire.[2] A little farther on Alfonso even argues that kings have not only the same powers in the kingdom as the emperor has in the empire, but larger powers, because they hold their lordship by inheritance while the emperor holds his by election;[3] and in yet another place he says explicitly that by the grace of God he has no superior in temporal matters.[4]

It is plain that while Alfonso X. may think of the emperor as having the place of highest temporal dignity in the world, he quite as clearly repudiates the notion that the emperor has any authority over other kingdoms, and indeed claims for the king exactly the same authority as that of the emperor.

The conclusion, which appears to us reasonable and well-founded, is very much the same as that which we expressed at the end of our third volume—that is, that while the conception of the political unity of the world under the one authority of the emperor still survived as a theory in some quarters, it had no real significance in the political theory of the thirteenth century, or in the actual structure of political society. We venture to think that it is time that students of history should recognise this, and should recognise that it is not really in accord with the characteristics of the political order of the Middle Ages to think of them as tending towards an international or universal unity, as far as this was to be found in the temporal order. What importance there may have been in the conception of a political unity under the control of the spiritual power we shall consider in detail in the second part of this volume. In our next volume we hope to consider what was the real importance and significance of such conceptions as those of Dante and other writers of the fourteenth century.

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[1] 'Siete Partidas,' ii. 1, 1: "Imperio es grant dignitat, et noble et honrada sobre todas las otras que los homes pueden haber en este mundo temporalmente . . . et el non es tenudo de obedescer á ninguno, fueras ende al Papa en las cosas espirituales. . . . Et otrosi, dixieron los sabios que el emperador es vicario de Dios en el imperio para facer justicia en lo temporal, bien asi como lo es el Papa en los espirituel."

[2] Id., ii. 1, 5: "Vicarios de Dios son los reyes cada uno en su regno puestos sobre las gentes para mantenerlas en justicia et en verdad quanto en lo temporal, bien asi como el emperador en su imperio."

[3] Id., ii. 1, 8: "Sabida cosa es que todos aquellos poderes que desuso deximos que los emperadores han et deben haber en las gentes de su imperio, que esos mismos han los reyes en las de sus regnos, et mayores; ca ellos non tam solamente son señores de sus tierras mientras viven, mas aun á sus finamientos las pueden dexar á sus herederos, porque han el señorio por heredat, lo que non pueden facer los emperadores que lo ganan per eleccion, asi como desuso deximos."

[4] 'Especulo,' i. 1, 13: "E pues que estos las fezieron que avien mayores sobre si, mucho mas las podemos nos fazer que por la merced de Dios non avemos mayor sobre nos en el temporal."

As far as the mediæval civilisation in the proper sense is concerned—that is, the civilisation which reached its culmination in the thirteenth century,—we feel ourselves compelled to say that its tendency was not towards unity but rather towards disintegration, not indeed to such a confused anarchy as that of the tenth century, but to the development of the national system of modern Europe. How far this system is again to be transformed by the creation of some new organisation of unity the future alone can show.

PART II.

THE THEORIES OF THE RELATIONS OF THE TEMPORAL AND SPIRITUAL POWERS.

CHAPTER I.

INNOCENT III.

In a previous volume we have dealt with the theories held by Innocent III. regarding the relations between Church and State so far as they appear from the Decretals. These passages are very important but they do not cover the whole ground, and it is necessary to consider his sermons and letters not included in the Decretals.

The compiler of the Decretals did not hesitate to include very strong statements regarding the powers and pre-eminence of the Popes[1]; these do not, however, give a complete idea of Innocent's claims. So far as they go we have shown, in discussing the relevant passages, that while Innocent held that the spiritual power was greatly superior in dignity to the temporal, yet he also held that both alike were of divine appointment. In the case of the empire Innocent admitted the right of the German princes to elect their king to be promoted to the empire, after his coronation by the Pope, but he claimed the right and authority to examine the person elected and to decide whether he was fit for empire. He also claimed the right to decide in the case of disputed elections.[1] In the case of disputes between rulers, Innocent claimed the right to arbitrate where a question of sin was involved.[2]

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[1] *E.g.*, 'Decretals,' 3, 1, 7. Potestatem transferendi pontifices ita sibi retinuit Dominus et magister, quod soli beato Petro vicario suo, et per ipsum successoribus suis, speciali privilegio tribuit et concessit. . . . Non enim homo, sed Deus separat, quos Romanus pontifex, qui non puri hominis, sed veri Dei vicem gerit in terris, ecclesiarum necessitate vel utilitate pensata, non humana, sed divina potius auctoritate dissolvit.

In the Vercelli case he laid down the rule that suitors would not be heard by the Holy See in matters within the jurisdiction of the secular courts, unless justice were refused by the civil authorities concerned. Should justice be refused, recourse might be had to the bishop or to the Pope; especially at a time when the empire was vacant and there was no superior to whom they might appeal for justice.[3] Finally, it seems that he maintained that it was for the Pope to decide in cases where it was uncertain whether the matter was one for ecclesiastical or for secular authorities to deal with.[4] The passages cited in the Decretals, from Innocent, do not include any reference to Constantine's donation, but there is an important statement on this subject in one of his sermons to which we shall refer later on.[5]

Every reader of Innocent's letters must be struck by his tremendous assertion of the Pope's exalted position. Gregory VII. was content to be the vicar of St Peter.[6] For Innocent, the Pope is the vicar of Christ (or sometimes of God); less than God but greater than man; the successor of Peter and vested with the same powers. Thus in a sermon on the consecration of the Pope (possibly the sermon preached by him on the day of his own consecration) he speaks of himself as placed above all peoples and kingdoms, endowed with the fulness of power, less than God but greater than man, judging all, but judged by God alone.[1] In another sermon on the anniversary of his consecration he speaks of his marriage to the Church (of Rome) and of the dowry he has received—a priceless dowry, the fulness of spiritual and the "latitudo" of temporal powers. As a sign thereof he has received the mitre to indicate his spiritual and the crown to indicate his temporal power.[2] His authority is divine rather than human.[3] He has received of God such fulness of spiritual power that no increase thereof is possible.[4] Innocent complained in

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[1] Vol. ii. p. 217 f.

[2] Vol. ii. p. 219 f.

[3] Vol. ii. p. 223.

[4] Vol. ii. p. 231 f.

[5] See p. 183 f.

[6] Thus (we quote from Erich Caspar's edition of Gregory VII. Register) i. 72: "Nos (*i.e.*, Gregory) licet indigni qui vicarii eius (*i.e.*, of Peter) dicimur." iii. 10a: "Et ideo ex tua gratia, non ex meis operibus credo, quod tibi placuit et placet, ut populus christianus tibi (*i.e.*, Peter) specialiter commissus mihi obediat specialiter pro vice tua michi commissa." Similarly in iii. 10 he writes: "Considerantes quam districti iudicii de dispensatione crediti nobis per beatum Petrum apostolorum principem." Sometimes St Paul is associated with St Peter—*e.g.*, i. 34. Gregory gives absolution "auctoritate principum apostolorum Petri et Pauli fulti quorum vice quamvis indigni funigmur." viii. 37: "Proinde carrissimi filii, auctoritate sancte romane ecclesie, vice beatorum apostolorum Petri et Pauli nobis licet indignis concesse." In many passages he speaks of himself as acting by the authority of Peter—*e.g.*, i. 49: "Obsecremus et auctoritate beati Petri admonemus." As in the passage quoted above from viii. 37, St Paul is occasionally associated with St Peter as giving the authority.

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[1] M. P. L., vol. 217. Sermones de diversis. Sermo II. In Consecratione Pontificis maximi, col 657-8. Mihi namque dicitur in Propheta: "Constitui te super gentes et regna, ut evellas et destruas et disperdas et dissipes, et ædifices et plantes" . . . cæteri vocati sunt in partem sollicitudinis, solus autem Petrus assumptus est in plenitudinem potestatis. Jam ergo videtis quis iste servus, qui super familiam constituitur, profecto vicarius Jesu Christi, successor Petri, Christus domini, Deus Pharaonis: inter Deum et hominem medius constitutus, citra Deum, sed ultra hominem: minor Deo, sed major homine: qui de omnibus judicat, et a nemine judicatur: Apostoli voce pronuntians, "qui me judicat, Dominus est" . . . . . .

[2] M. P. L., vol. 217. Sermo III. In Consecratione Pontificis, col. 665, A and B. Hæc autem sponsa (*i.e.*, the Ecclesia Romana) non nupsit vacua, sed dotem mihi tribuit absque pretio pretiosam, spiritualium videlicet plenitudinem et latitudinem temporalium, magnitudinem et multitudinem utrorumque. Nam cæteri vocati sunt in partem sollicitudinis, solus autem Petrus assumptus est in plenitudinem potestatis. In signum spiritualium contulit mihi mitram, in signum temporalium dedit mihi coronam; mitram pro sacerdotio, coronam pro regno.

[3] Reg. I. 447, col. 423 A. To the Archbishop of Tours, 3rd December 1198, regarding the transfer of bishops from one church to another. "Non enim humana sed divina potius potestate conjugium spirituale dissolvitur, cum per translationem vel depositionem aut etiam cessionem auctoritate Rom. pontificis, quem constat esse vicarium Jesu Christi, episcopus ab Ecclesia removetur."

[4] Reg. VI. 163, col. 177. To the king of the French, 31st October 1203. "Nos igitur . . . mirati sumus non modicum et turbati, quod consilium iniise videris, et concinnasse responsum contra sedis apostolicæ potestatem, tanquam jurisdictionem ejus velis aut valeas coarctare, quam non homo sed Deus, imo verius Deus-Homo, in spiritualibus usque adeo dilatavit, ut nequeat amplius ampliari, cum adjectionem non recipiat plenitudo."

March 1211 to the Archbishop of Ravenna of the behaviour of Otto IV. From his letter it appears that many held that he had brought his sufferings on his own head by raising Otto to the throne. His reply was that God Himself said He repented having created man.[1] As there is no acceptance of persons with God, so there can be none with him. He has been exalted to a throne where he judges even princes, and should the King of France, trusting in his might, oppose the Pope's commands, he will be unable to stand before the face of God, of whom the Pope is viceregent.[2] Innocent compares the despatch of his envoys to the faithful, to the missions entrusted by Christ to his disciples.[3] He cannot tolerate contempt shown to himself, nay, rather to God whose place he holds on earth.[4] Philip (of France) should recognise what honour and glory he had received from all Christians for his obedience to the Pope's orders.[1] Kings so revere him that they hold devoted service to him to be a condition of good government.[2] Injured persons may have recourse to the Pope, the highest authority, and bound to do justice as "debtor both to the wise and to the unwise."[3] The Archbishop of Tours is commended for consulting the Pope about matters regarding which he was in doubt, as the Apostolic See has by divine ordinance been placed over the whole world, and should be referred to by all in doubt on any matter.[4] The King of Armenia is praised because he sought the help of the Roman Church, not only in spiritual but also in temporal matters, and because he appealed to it to help him in defending his just claims (in justitiis suis).[5] The name of the Apostolic See is revered even among nations which do not know God.[6] God who "wrought effectually in Peter to the apostleship," also

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[1] Reg. XIII. 210, 4th March 1211. Deo et vobis de imperatore conquerimur, qui beneficiorum nostrorum ingratus, et promissionum suarum oblitus, retribuit nobis mala pro bonis, . . . multis insultantibus nobis quod merito ea patimur, cum nos fecerimus gladium de quo graviter vulneramur. Sed insultatoribus nostris respondeat pro nobis Altissimus, qui puritatem animi nostri plene cognoscit, nec sine causa legitur de se ipso dixisse; "*Pœnitet me fecisse hominem* (*Gen. vi.*)" . . . Quis ergo de cætero sibi credat aut quis de ipso confidat, quandoquidem nobis fidem non servat qui, licet indigni, locum Christi tenemus in terris, qui tot et tanta sibi contulimus beneficia?

[2] Reg. I. 171, col. 148 C, col. 150 C, 17th May 1198. To Philip, king of the French. Licet dextera Domini suam fecerit in nostra promotione virtutem, . . . et illud nos voluerit dignitatis solium obtinere, ut non solum cum principibus, sed de principibus etiam judicemus; . . . (col. 150 C.) cum inspirante Domino immutabilem animum et inflexibile propositum habeamus nec prece, nec pretio, nec amore, nec odio declinandi a semita rectitudinis; sed via regia incedentes, nec ad dexteram declinabimus nec deviabimus ad sinistram; sine personarum acceptione facientes judicium, quia non est personarum acceptio apud Deum. Non ergo posses, quantumcunque confidas de tua potentia, subsistere ante faciem, non dicimus nostram, sed Dei, cujus, licet immeriti, vices exercemus in terris.

[3] Reg. I. 526, 8th January 1199. To Vulcan, King of Dalmatia. noster Dominus et magister, qui præbuit nobis exemplum ut sequamur vestigia ejus, discipulos suos per universas mundi partes ad prædicandum direxit. . . . Quam siquidem observantes constitutionem providam et salubrem Rom. pontifices, vicarii Jesu Christi, qui in beato Petro . . . ab ipso Domino receperunt plenitudinem potestatis . . . per varia mundi climata a suo latere aliquos dirigunt et transmittunt, qui fideles in fide consolident, corrigenda corrigant, . . .

[4] Reg. I. 485, 22nd December 1198, col. 453 A. To Richard, king of the English. Alioquin, quantumcumque personam tuam in Domino diligamus et honori tuo velimus . . . deferre, contemptum nostrum, imo Dei, cujus locum, licet indigni, tenemus in terris, non poterimus ulterius æquanimiter sustinere.

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[1] Reg. III. 18, September or October 1200. To the king of the French. "Utinam intelligat regalis prudentia per seipsam et a suis ei fidelibus fideliter exponatur quantum honoris et gloriæ, laudis et famæ, in exsecutione mandatorum nostrorum, apud omnes accreverit Christianos."

[2] Reg. XVI. 131, 4th November 1213. To John, king of the English. "Rex regum et Dominus dominantium Jesus Christus . . . ita regnum et sacerdotium in Ecclesia stabilivit ut sacerdotale sit regnum et sacerdotium sit regale, . . . unum præficiens universis, quem suum in terris vicarium ordinavit; ut sicut ei flectitur omne genu cœlestium, terrestrium, et etiam infernorum, ita illi omnes obediant et intendant, ut sit unum ovile et unus pastor. Hunc itaque reges sæculi propter Deum adeo venerantur ut non reputent se rite regnare, nisi studeant ei devote servire."

[3] See pp. 152 and 174 f.

[4] Reg. II. 77, 18th May 1199. To the Archbishop of Tours. "Quod sedem apostolicam consulis super his quæ dubia tibi existunt gratum gerimus et acceptum, . . . cum lex divinæ constitutionis eamdem sedem totius posuerit orbis terrarum magistram, ut quidquid dubitatur ab aliquo ab ea tandem ejusdem ratio requiratur."

[5] Reg. II. 253, col. 813 A, 25th December 1199. To the King of Armenia. "Ei a quo est omne datum optimum et omne donum perfectum, qui corda principum habet in manu sùa et a quo est omnis potestas, quas possumus gratiarum referimus actiones quod te usque adeo in devotione apostolicæ sedis radicavit, ut non solum in spiritualibus, sed in temporalibus etiam ad auxilium Ecclesiæ Romanæ recurras et in tuendis justitiis tuis per appellationem interpositam opem ejus implores."

[6] Reg. XV. 189, col. 712 B, 20th October 1212. To the consuls and people of Milan. "Postremo a devotione apostolicæ sedis, cujus nomen reverendum est etiam apud gentes quæ Dominum non noverunt, vos penitus subtraxistis."

"wrought effectually" through Innocent, persuading Philip by means of the papal legate to make a truce with Richard.[1] He writes to Richard of England that he has taken action after consulting with the cardinals, and in accordance with divine revelation (divinitus revelatum).[2] The pre-eminence of the Apostolic See is due, not to the decree of any synod but to divine ordinance.[3] There proceeds from the Apostolic See a sword, very sharp and swift, and it binds those whom it strikes, not on earth alone but also in heaven.[4]

It is as the successors of Peter that Innocent claims for the Popes their exalted position. In virtue of this succession they are vicars of Christ, and as his vicars they have received from him authority (principatum et magisterium) over all Churches, over all clerics, nay more, over all the faithful. Others have limited rule, the Pope alone has the fulness of power. While the Popes are inferior to Peter in sanctity and in the power of working miracles, they are in every respect his equals so far as their jurisdiction is concerned.[5]

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[1] Reg. II. 24, col. 553 B, 26th April 1199. To Philip, king of the French. "Qui operatus est Petro in apostolatu, nobis per ipsum operari et cooperari dignatus est, dum ad adventum dilecti filii nostri . . . apost. sedis legati, terra cordis tui venientem super se imbrem devote suscepit. . . ."

[2] Reg. I. 435, col. 415 B and C, 20th November 1198. To Richard, king of the English. "In facto capellæ de Lamhee de communi consilio fratrum nostrorum processimus sicut nobis fuit divinitus revelatum. . . ."

[3] Reg. II. 211 C, 771 A, 13th November 1188. To Alexius, Emperor of Constantinople. "Licet autem apostolica sedes non tam constitutione synodica quam divina caput et mater omnium Ecclesiarum existat. . . ."

[4] Reg. VI. 181, col. 195 C, 5th December 1203. To the King of the Danes. "ex cujus ore (*i.e.*, the Apostolic See) procedit gladius bis acutus, penetrabilior omni gladio ancipiti, et a mari ad mare vibratilis in momento, utpote qui tanquam in ictu oculi mare transvolat, . . . ligans quos percutit non in terris solummodo, sed in cœlis."

[5] Reg. II. 220, col. 779 B and C, 24th November 1199. To the king of the Armenians. "Romani pontifices successores Petri et vicarii Jesu Christi, sibi invincem per successivas varietates temporum singulariter succedentes, super Ecclesiis omnibus et cunctis Ecclesiarum prælatis, imo etiam fidelibus universis, a Domino primatum et magisterium acceperunt; vocatis sic cæteris in partem sollicitudinis, ut apud eos plenitudo resideat potestatis. Non enim in Petro et cum Petro singulare illud privilegium exspiravit quod successoribus ejus futuris usque in finem mundi Dominus in ipso concessit; sed præter vitæ sanctitatem et miraculorem virtutes, par est in omnibus jurisdictio successorum."

It is from St Peter that the Apostolic See (or as Innocent also calls it the Roman Church, or the Universal Church)[1] has received the primacy over all other Churches. James, the brother of our Lord, content with Jerusalem, left to Peter the government not only of the Church Universal, but also of the whole world (sæculum).[2]

We must now examine what authority Innocent did claim as Pope in temporal matters. In a previous volume[1] we have seen that in one of his letters he compared the pontifical and the royal authority to the sun and moon. In another letter he developed this. As the moon receives its light from the sun, so the splendour of the royal power and authority is derived from the pontifical authority.[2] The logical conclusion would appear to be that the royal authority is derived from the pontifical. Innocent, however, did not draw the conclusion, though here as in other cases he appears, consciously or unconsciously, to be laying a foundation for future explicit claims.[3] It is clear from other letters that Innocent did not as Pope claim supreme temporal power. Thus, in a letter to the consul and people of Jesi, he speaks of his unlimited spiritual jurisdiction over peoples and kingdoms, while by the grace of God he has also much power in temporal matters.[4] Again, in a letter to the Archbishop of Ravenna, he writes, that ecclesiastical liberty is nowhere better secured than where the Roman Church has authority both in temporal and in spiritual matters.[5] In the Government of the Ecclesia two swords are required, the spiritual

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[1] Innocent seems to use indifferently the words "universalis ecclesia," "Romana ecclesia," and "apostolica sedes" to describe the church of which Peter was the divinely appointed head, to whom the Popes succeeded, with all the powers given to Peter (See note 5, p. 156). In his letter of 1199 to the patriarch of Constantinople (Reg. II. 209, col. 762 D to 763), he shows how it is that the Roman church is also the "ecclesia universalis." He writes: "Nos autem inquisitioni tuæ taliter respondemus, quod Ecclesia duabus de causis universalis vocatur. . . . Dicitur enim universalis Ecclesia quæ de universis constat Ecclesiis, quæ Græco vocabulo *Catholica* nominatur. Et secundum hanc acceptionem vocabuli, Ecclesia Romana non est universalis Ecclesia, sed pars universalis Ecclesiæ, prima videlicet et præcipua, veluti caput in corpore; quoniam in ea plenitudo potestatis existit, ad cæteros autem pars aliqua plenitudinis derivatur. Et dicitur universalis Ecclesia illa una quæ sub se continet Ecclesias universas. Et secundum hanc nominis rationem Romana tantum Ecclesia universalis nuncupatur, quoniam ipsa sola singularis privilegio dignitatis cæteris est prælata; sicut et Deus universalis Dominus appellatur. . . . Est enim una generalis Ecclesia, de qua Veritas inquit ad Petrum; *Tu es Petrus, et super hanc petram ædificabo Ecclesiam meam* (*Matt. xvi.* 18). Et sunt multæ particulares Ecclesiæ. . . . Ex omnibus una consistit, . . . et una præeminet omnibus. . . ." If the universalis ecclesia is the body in the firmament of which are set the two great lights (*i.e.*, powers), it would seem logically to follow that Peter and his successors are supreme over both, but Innocent does not draw this conclusion (see also p. 158).

[2] Reg. II. 209, col. 759 C, D, 12th November 1199. "Huic (*i.e.*, Peter) Dominus oves suas pascendas vocabulo tertio repetito commisit; ut alienus a grege Dominico censeatur qui eum etiam in successoribus suis noluerit habere pastorem. Non enim inter has et illas oves distinxit, sed simpliciter inquit; *Pasce oves meas* (*Joan. xxi.* 17), ut omnes omnino intelligantur ei esse commissæ. Jacobus enim frater Domini, qui videbatur esse columna, Jerosolymitana sola contentus, ut ibi semen fratris præmortui suscitaret ubi fuerat crucifixus, Petro non solum universam Ecclesiam sed totum reliquit sæculum gubernandum. Quod ex eo etiam evidenter apparet, quia cum Dominus apparuisset in littore discipulis navigantibus, sciens Petrus quod Dominus esset, se misit in mare ac aliis navigio venientibus, ipse sine beneficio navis ad Dominum festinavit. Cum enim mare mundum designet, juxta verbum Psalmistæ dicentis; *Hoc mare magnum et spatiosum, illic reptilia quorum non est numerus* (*Psalm ciii.* 25); per hoc quod Petrus se misit in mare, privilegium expressit pontificii singu-

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laris, per quod universum orbem susceperat gubernandum; cæteris apostolis ut vehiculo navis contentis, cum nulli eorum universus fuerit orbis commissus, sed singulis singulæ provinciæ vel Ecclesiæ potius deputatæ."

From this it would appear that "sæculum" and "mundum" are equivalent.

[1] *Vide* vol. ii. p. 147, note 4; p. 215, note 1; and p. 226.

[2] Reg. I. 401, col. 377, 30th October 1198. To the prior and to the "rectors" of Tuscany and of the duchy. "Porro sicut luna lumen suum a sole sortitur, quæ re vera minor est illo quantitate simul et qualitate, situ pariter et effectu; sic regalis potestas ab auctoritate pontificali suæ sortitur dignitatis splendorem; cujus conspectui quanto magis inhæret, tanto majori lumine decoratur; et quo plus ab ejus elongatur aspectu, eo plus proficit in splendore. Utraque vero potestas sive primatus sedem in Italia meruit obtinere, quæ dispositione divina super universas provincias obtinuit principatum."

[3] The logical conclusion was drawn by later writers. See p. 318 *seq.* of this volume.

[4] Reg. II. 4, 17th March 1199. To the consul and people of Jesi. "Cum apostolicæ sedis jurisdictio spiritualis nullis terminis coarctetur, imo super gentes et regna sortita sit potestatem, in multis etiam per Dei gratiam ejus extenditur jurisdictio temporalis."

[5] Reg. I. 27. To the Archbishop of Ravenna and his suffragans. Undated; written early in 1198. "Nusquam melius ecclesiasticæ consulitur libertati quam ubi Ecclesia Rom. tam in temporalibus quam spiritualibus plenam obtinet potestatem."

and the material. Both are given by God direct; the one to spiritual and the other to temporal rulers.[1] We shall deal later on with Innocent's reference to Constantine's donation; we need only mention here that he treats the donation by the emperor as of grace, and there is no suggestion, as in Innocent IV.'s letters, that the Pope only received from Constantine that to which he was already entitled.[2]

We have still, however, to explain Innocent's explicit assertion of Peter's supremacy, not only over the whole Church, but also over the whole "sæculum" or "mundum."[3] It was in virtue of his office as Christ's vicar, in succession to Peter, that he appointed and deposed kings, that he gave them protection, that he ordered contending parties to make peace, that he took the orphans and widows of crusaders under his protection, and that he confirmed treaties of peace, agreements, grants, and statutes. We shall give some examples of the action taken by him in various cases, and the grounds given by him for taking it.

Towards the end of 1199 or the beginning of 1200 Innocent had written Kaloyan of Bulgaria (whom he addressed simply as "nobilis") asking him to receive his legate.[4] Kaloyan did not reply till 1202. In his letter Kaloyan, who styled himself emperor, asked the Church of Rome to grant him a crown and the honours given to his ancestors.[1] Innocent replied on the 27th November 1202, addressing Kaloyan this time as " dominmus " of the Bulgarians and Wallachians, informing him that he found in the papal registers that many kings, of the lands now subject to him, had been crowned, and that his chaplain whom he was sending to Bulgaria would, among other matters, inquire into the facts regarding the crown conferred by the Church of Rome on his ancestors.[2]

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[1] Reg. III. 3, 11th October 1200. To the king of the Hungarians. "Cum ad vindictam malefactorum et laudem bonorum, materialis usum gladii et terrenum a Domino acceperis potentatum."

Reg. VII. 212, col. 527 B and C, 7th February 1205. To the king of the French. "gladium, quem Petrus per seipsum exercet, non metuunt, qui sunt extra ovile Domini constituti . . . expedit, ut sæcularis gladius potestatis, qui ad malefactorum vindictam a regibus et principibus bajulatur, ad vindicandam evaginetur injuriam Salvatoris . . . Ut igitur gladium, quem Dominus tibi tradidit, . . . non videaris sine causa portare; . . . oportet ut, . . . causam Dei alleges gladiis apud eos."

Reg. IX. 217, col. 1060 B, 4th January 1206. To Duke Ladislaus. "Nunquid ideo tibi gladius est ab ipso (*i.e.*, God) collatus. . . ."

Reg. XI. 28, col. 1358 D. "Quapropter, dilectissime fili, gladium quem ad vindictam malefactorum, laudem vero bonorum a Domino accepisti, gladio nostro junge."

In Reg. XV. 189, col. 711 D, 20th October 1212. To the consuls and people of Milan the Pope speaks of himself as one "quibus Petri gladius est commissus"—*i.e.*, he claims only one sword.

[2] See p. 306.

[3] See p. 157.

[4] Reg. II. 266. Undated, probably end of December 1199, or early in January 1200.

As Bulgaria had only regained its independence from the Greek Empire a few years before,[3] and the fourth crusade had just commenced,[4] caution was obviously necessary in formally recognising the Bulgarian kingdom. In the following year, after the capture of Constantinople in July and the restoration of the emperor Isaac Angelus to the throne, the situation had altered. Some time before September 1203, Kaloyan wrote Innocent telling him that the Greeks had sent him their patriarch, promising to crown him as emperor, and to make his archbishop a patriarch (Innocent had not done so), but he refused their advances and again asked the Pope to have him crowned as emperor and to promote his archbishop.[5] Innocent replied holding out to the " dominus Bulgarorum " hopes that his requests would be granted.[6] A few months later the Pope wrote Kaloyan, "the King of the Bulgarians and Wallachians," that he was sending him by a cardinal, a sceptre and a diadem. In virtue of his power as vicar of Christ, and bound to feed his sheep, he appointed him king over his flock, trusting in the authority of him by whom Samuel anointed David as king, and seeking to provide for the welfare of the people both spiritually and temporally. Before his legate crowned him, Kaloyan was to swear that he and his successors, and all the lands and peoples subject to him, would remain devoted and obedient to the Roman Church. As requested by Kaloyan's envoy, he gave the king authority to mint money with his image on it (tuo charactere insignitum).[1] There is no reference in this letter to the previous history of Bulgaria, nor to the inquiries previously ordered by Innocent, the action is based solely on Innocent's authority as vicar of Christ. In a separate letter, probably written at the same time, he sent the king a standard (vexillum) to "use against those who honour the crucified one with their lips, but whose heart is far from him." [2]

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[1] Reg. V. 115, sometime in 1202.

[2] Reg. V. 116, col. 1114 C, 27th December 1202. "Nos igitur ut super hoc majorem certitudinem haberemus, regesta nostra perlegi fecimus diligenter; ex quibus evidenter comperimus quod in terra tibi subjecta multi reges fuerint coronati. . . . (col. 1115 B) Mandamus quoque ipsi (the papal legate), ut de corona progenitoribus tuis ab Ecclesia Romana collata, tam per libros veteres quam alia documenta, inquirat diligentius veritatem."

[3] The Bulgarian revolt commenced in 1186.

[4] The siege of Zara commenced on the 10th November 1202.

[5] Reg. VI. 142. Not dated. Sometime in 1203.

[6] Reg. VI. 144, 10th September 1203.

Sverre, the King of Norway, had for some time been engaged in a serious conflict with the Church in Norway, and Innocent directed that his followers should be excommunicated and their lands placed under interdict.[3] He also ordered the King of Denmark (per apostolica scripta mandamus) to take up arms against him.[1] He also directed the Archbishop of Norway to excommunicate a bishop supporting him.[2] This was in 1198. In 1211, long after Sverre's death, the disputed succession again came before Innocent, the supporters of his descendants still refusing to accept the Pope as arbiter.[3]

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[1] Reg. VII. 1, 24th February 1204, col. 279 C. "Cum igiter, licet immeriti ejus vices geramus in terris qui dominatur in regno hominum, et cui voluerit dabit illud, utpote per quem reges regnant et principes dominantur, cum Petro et successoribus suis, et nobis in eo, noverimus esse dictum"; *Ego pro te rogavi, Petre, ut non deficiat fides tua, et tu aliquando conversus confirma fratres tuos* (*Luc. XXII.*) "cum ex praecepto Domini oves ejus pascere teneamur; populis Bulgarorum et Blacorum, qui multo jam tempore ab uberibus matris suæ alienati fuerunt, in spiritualibus et temporalibus paterna sollicitudine providere volentes, ejus auctoritate confisi per quem Samuel David in regem inunxit, regem te statuimus super eos, et per dilectum filium, Leonem . . . apostolicæ sedis legatum, . . . sceptrum regni ac regium tibi mittimus diadema, ejus quasi nostris tibi manibus imponendum, recipiendo a te juratoriam cautionem quod nobis et succesoribus nostris et Ecclesiæ Romanæ devotus et obediens permanebis, et cunctas terras et gentes tuo subjectas imperio in obedientia et devotione sedis apostolicæ conservabis. Ad petitionem insuper venerabilis fratris nostri, . . . quem ad sedem apostolicam destinasti, publicam in regno tuo cudendi monetam tuo charactere insignitam liberam tibi concedimus facultatem."

[2] Reg. VII. 12, 25th February 1204.

[3] Reg. I. 382, 6th October 1198, col 362 C, D. "Ne autem ejus perversitas desæviat diutius in insontes . . . mandamus quatenus Norwagiæ populum diligentius moneatis ne ipsum ulterius sequi præsumant, aut ei præstare auxilium vel favorem." Those who disobey to be excommunicated, and the lands of Sverre's supporters in Norway to be placed under an interdict.

Besides appointing and deposing kings, we find Innocent actively supporting them. Thus in March 1202, before John's final breach with Philip, Innocent wrote the Archbishop of Rouen, directing him to take action against John's rebellious barons in Normandy, or in his other lands in France. He was, on the Pope's authority, to warn them, and if this failed he was to inflict ecclesiastical punishments.[4]

We may take other instances of Innocent's action in protecting kings from his dealings with Hungary. It is noticeable that, though the Roman Church had long-standing claims on Hungary as a feudal State, the Pope does not issue any of his orders as feudal lord of the kingdom. Bela, King of Hungary, was succeeded by his son Emerich, who had been crowned during his father's lifetime. Coelestine III. forbade the Hungarians to assist Andrew, Emerich's brother, on pain of excommunication, and in support of this policy one of the first letters written by Innocent after his accession was to the Abbot of St Martin's, summoning him to Rome to answer for the support he had given to Andrew.[1] Before his consecration he also wrote Andrew, directing him to carry out the promise he had given his father to go on crusade. In case of failure he would be anathematised, and should his brother die childless he would be passed over in the succession by his younger brother.[2] In June the same year, at Emerich's request, Innocent allowed the king, so long as Hungary was in a disturbed state, to retain in the kingdom any twenty crusaders he chose.[3] He wrote at the same time to Andrew, ordering him (per apostolica scripta tibi mandamus) to be faithful to his brother, and forbidding him to make an armed attack on the king or to stir up sedition against him. Disobedience was to be punished by excommunication, and his lands and those of his supporters were to be placed under interdict.[4] In February 1203 he directed the archbishops and bishops in Hungary to give an oath of fidelity to Ladislaus before his father, Emerich, started on crusade. He gave this order that the pontifical authority should so guard and defend the kingdom that it could not be transferred to another.[1] A year later, at the king's request, he ordered the Archbishop of Gram to crown his son, though a minor; the father giving, on behalf of his son, the customary oath of obedience to the Roman Church, and an undertaking to maintain the liberty of the Hungarian Church.[2] In April 1205, after the death of Emerich, the Pope wrote, as vicar of Christ and bound by his apostolic office to protect minors, directing Andrew not to allow the regalia to be dispersed during the minority of his nephew, Ladislaus.[3] At the same time he directed the Hungarian clergy to defend the king against attack.[4] In June 1206 he again addressed the Hungarian prelates and nobles on behalf of Ladislaus, directing them on pain of ecclesiastical penalties to take the oath of fidelity.[5]

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[1] Reg. I. 383, 6th October 1198. "Serenitatem regiam rogamus, monemus et exhortamur in Domino, ac per apostolica scripta mandamus quatenus ad defendendas Ecclesias, clericos in sua libertate tuendos, liberandos pauperes et potentes de manu persecutoris illius, imo etiam ad dejiciendum monstrum illud (*i.e.*, Sverre) . . . taliter accingaris, ut et a Deo retributionem æternam et nostram consequi gratiam specialius merearis."

[2] Reg. I. 384, 6th October 1198.

[3] Reg. XIV. 73, 7th June 1211. See also Hurter's 'Geschichte Papst Innocenze des Dritten,' vol. iii. chap. xvi.

[4] Reg. V. 31, 7th May 1202. "Ideo fraternitati tuæ per apostolica scripta mandamus atque præcipimus, quatenus, si qui in Normannia vel aliis partibus cismarinis eidem regi subjectis contra eum præsumpserint rebellare et ipsi debitam subtraxerint reverentiam et honorem, præsumptionem eorum auctoritate nostra suffultus, monitione præmissa, per censuram ecclesiasticam, appellatione remota, compescas, mandatum apostolicum taliter impleturus, quod et nostram et regiam gratiam valeas uberius promereri."

We shall refer later on to the action taken by Innocent to support John after he had become a vassal of the Church (p. 184).

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[1] Reg. I. 7, early in 1198.

[2] Reg. I. 10, 29th January 1198. "Verum eodem patro tuo sublato de medio, cum Hierosolymitanum iter te accipere simulasses, assumptæ peregrinationis oblitus quam contra inimicos crucis dirigere debueras, in fratrem tuum et regnum Hungariæ convertisti aciem bellatorum, . . . Nos autem, quos diebus istis ad pontificatus officium, licet immeritos, Dominus evocavit, tam paci regni Hungariæ quam tuæ volentes saluti consulere, nobilitatem tuam rogamus, . . . ac per apostolica tibi scripta præcipiendo mandamus quatenus, . . . propositum iter arripias et humiliter prosequaris; ne si onus tibi a patre injunctum et a te sponte susceptum occasione qualibet detrectaris, paterna te reddas successione indignum et hæreditatis emolumento priveris cujus recusaveris onera supportare. Sciturus ex tunc anathamatis te vinculo subjacere, et jure quod tibi, si dictus rex sine prole decederet, in regno ungariæ competebat ordine geniture, privandum, et regnum ipsum ad minorem fratrem tuum appellatione postposita devolvendum.

[3] Reg. I. 270, 16th June 1198.

[4] Reg. I. 271, 15th June 1198. "Ea semper Ecclesiæ Romanæ regnum Ungariæ devotio counivit, illa semper dilectionis sinceritas Ecclesiam eidem regno conjunxit, ut apostolica sedes regno ipsi tam in spiritualibus quam temporalibus paternæ sollicitudinis affectum curaverit impertiri et regnum ipsum a fide ac unitate sedis apostolicæ nulla recesserit tempestate, . . . nobilitatem tuam rogamus, monemus et exhortamur in Domino, ac per apostolica tibi scripta mandamus quatenus taliter de cætero in fidelitate ipsius (*i.e.*, King of Hungary) ac devotione persistas. . . . Ad hæc, tibi districtius inhibemus ne in regem vel regnum arma movere præsumas vel seditionem aliquam suscitare. . . ." Should he disobey, the archbishops and bishops had orders to excommunicate him, and place his lands under interdict.

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[1] Reg. VI. 4, 25th February 1203. "Ut igitur in absentia tanti principis, . . . ad regni tutelam et defensionem taliter pontificalis accingatur auctoritas, quod regnum ejus transferri non possit ad hostes . . . fraternitati vestræ per apostolica scripta mandamus et districte præcipimus, quatenus, antequam rex ipse (*i.e.*, of Hungary) iter peregrinationis arripiat, cum, juxta doctrinam Apostoli, sit regi tanquam præcellenti ab omnibus deferendum, Ladislao, filio ejus, quem Dominus per gratiam suam illi concessit hæredem, debitum juramentum fidelitatis exhibere curetis," the penalty for breaking the oath to be excommunication, also "illis etiam, quos idem rex, tam ad filii sui curam, quem annuente Domino exspectamus . . . hæredem et patri successorem in regno, quam administrationem regni commiserit, juxta ordinationem regis ipsius reverentiam debitam exhibere curetis."

[2] Reg. VII. 57, 25th April 1204. Before crowning the archbishop "recepturus ab ipso patre, filii sui vice, corporaliter juramentum super apostolicæ sedis obedientiam, quam super Ecclesiæ Ungaricæ libertate, sicut progenitores sui cum humilitate ac devotione debita impenderunt."

[3] Reg. VIII. 39, 25th April 1205. "Ut igitur eidem regi (*i.e.*, Ladislaus) regni jura integra conserventur, nos, qui apostolatus officio tenemur tueri pupillum, cum illius, quamvis indigni, vices geramus in terris cui dicitur per Prophetam; Pupillo tu eris adjutor, . . . auctoritate præsentium sub obtestatione divini judicii districtius inhibemus, ne, dum idem rex fuerit in ætate minori, alienentur regalia in detrimentum ipsius. . . ."

[4] Reg. VIII. 40, 25th April 1205. "Ut igitur erga regem ipsum, qui post patris decessum vobis dominus remansit et hæres, fidelitatis constantiam observeris, auctoritate vobis præsentium districtius inhibemus, ne cui contra coronam ipsius consilium vel auxilium impendatis, sed resistatis omnino, regis defendentes honorem, si quis forsitan contra eum agere tentaret." (See also VIII. 42 of same date, and VIII. 41 of the 27th April.)

[5] Reg. IX. 76, 7th June 1206. "universitatem vestram monemus, et exhortamur in Domino, per apos-

We must turn to another important aspect of Innocent's relations to the Temporal Power. We find him frequently intervening in conflicts between rulers, endeavouring to persuade or compel them to peace with each other. We shall in later chapters have to consider the similar action specially of Boniface VIII., and in our next volume we shall have to deal with some works which seem to indicate that the conception of some international system or method of setting forward peace was, for some time at least, of importance.

In a previous volume[1] we have dealt with Innocent's letter to the French archbishops and bishops regarding his claim to arbitrate between Philip, King of France, and John, King of England, and requiring the cessation of hostilities.

There were many previous and subsequent cases in which Innocent directed the contending parties to make peace or a long truce, but this case is remarkable from the stress laid by Innocent on the fact that he was taking action on a complaint by John that Philip had sinned against him, and that he was therefore bound as Pope to deal with the complaint and to inquire into the charge. This was the letter finally selected for the Decretals, no doubt because it appeared to give the Pope all the power he required, while avoiding the appearance of direct intervention in political controversies. It would be difficult to conceive of a case in which one or both the contending parties could not be accused of sin.

According to Wendover, a papal legate had endeavoured, in 1189, to compel Philip of France and Richard to come to terms with Richard's father, Henry II., and had threatened to put all Philip's lands under interdict. Philip refused to submit to the legate's orders, and denied that the Roman Church had any right to sentence a King of France for punishing a rebellious vassal, the very point taken by Philip in

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tolica vobis scripta præcipiendo mandantes, quatenus soboli, quæ regi nascetur eidem, quod, auctore Domino, futurum speratur in proximo, juramentum fidelitatis ad mandatum patris ipsius sine difficultate præstetis." If they do not obey, the Archbishop of Graon and the Bishop of Varadin have instructions to compel them to carry out these orders "districtione qua convenit, appellatione remota."

[1] Vol. ii. pp. 219-222.

1203.[1] In 1198, the first year of Innocent's pontificate, Richard appears to have complained to the Pope of injuries he had received during his absence on crusade. One of the persons he accused was Philip. The Pope replied that Philip had brought counter charges, and that he hoped to be able to come himself and inquire into the matter. Should he be unable to come, he would have the matter settled by a legate. He concluded his letter by a peremptory order to Richard to make peace and to keep it; otherwise, trusting in the power of the Almighty, whose vicar he was, he would by ecclesiastical pressure (districtione) compel him and the King of France to keep the peace.[2] He also wrote a similar letter to Philip, dwelling on the obligation that lay on himself as Pope to restore peace among those at variance with one another.[3]

While Philip and John were at war in 1203 the Pope issued peremptory orders to Philip to make peace, or a truce with a view to a lasting peace.

He threatened Philip in case of disobedience with ecclesiastical penalties, and wrote a similar letter to John. In his letter to Philip he based his action on the duty laid on him to seek peace and ensue it. He dwelt on the horrors of war, and on the encouragement given to the Saracens by this conflict between Christians. He was bound to interfere lest the blood of the multitudes slain be required at his hand, and he therefore sent his envoys to secure peace, or a truce leading to peace, between the two kings.[1] Philip, before answering, called a meeting of his magnates, ecclesiastical and lay. After he was assured of their support, he replied, according to a papal letter, that he was not bound to submit to the papal decision in feudal matters (de jure feodi et hominii), and that the Pope had no say in controversies between kings (nihil ad nos (*i.e.*, the Pope) pertinet de negotio quod vertitur inter reges). Innocent, in his reply, expressed his astonishment that the king should appear to wish to limit the Pope's jurisdiction in matters. He expressly disclaimed any intention of dealing with a feudal matter, but with the question of sin, raised by John's complaints against Philip. This is the first letter in which the Pope refers to these complaints. He still dwells in this letter on the evils and wickedness of war.[1] This was on the 31st October 1203. A few months later, probably in April 1204, Innocent wrote the French ecclesiastics a letter, portions of which were incorporated in the Decretals, and to which we have previously referred.[2] In this letter the Pope lays much more stress than in his letter to Philip, on the fact that he does not desire to diminish or to interfere with Philip's powers, and he emphasises the fact that he is dealing with a question of sin in which the Pope's jurisdiction could not be questioned. He makes a very brief reference to the horrors of war (religiosorum locorum excidium, et stragem . . . populi christiani), but the special feature of the letter, included in the Decretals, is the stress laid on John's complaint that he had been sinned against.

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[1] Mathew Paris. Vol. ii. p. 339.

[2] Reg. I. 230, 31st May 1198. Should he be unable to come (col. 199 A) "per legatos nostros quod justum fuerit, sine personarum acceptione, favente Domino, statuemus. Illud autem serenitatem regiam nolumus ignorare, quod quantumcunque nobis molestum existeret præfatum regem Franciæ ac te ipsum in aliquo molestare, non poterimus aliquatenus sustinere quin vos ad pacem ineundam pariter et servandam per districtionem ecclesiasticam ratione prævia compellamus; non de nostris viribus confidentes, sed de illius omnipotentia cujus vices, licet immeriti, exercemus in terris."

[3] Reg. I. 355. Date not given, but probably in the summer of 1198, some months after the letter to Richard referred to above. ". . . Unde nos, qui vices Christi, licet insufficientes, exercemus in terris, ejus sequentes exemplum et prædecessorum nostrorum consuetudinem imitantes, ad reformandam inter discordantes, veræ pacis concordiam intendere volumus et tenemur; præsertim cum ex discordantium ipsorum dissidio magnum tam ipsis quam Ecclesiis et pauperibus terræ suæ imo et toti Christiano populo provenerit detrimentum." See also Reg. VI. 163, 31st October 1203, to the King of France. According to this letter (col. 177 A) Richard complied very unwillingly while Philip accepted at once. This was no doubt the case, as Richard was at the time pressing Philip hard, and intervention was as unwelcome to Richard as it was well-timed for Philip.

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[1] Reg. VI. 68, 26th May 1203. "Cum regia serenitas non ignoret quod apud nos esse non debeat acceptio personarum, inde credimus eam non graviter sustinere, si circa ipsam pastoralis officii debitum exsequamur. . . . Siquidem esse non debet in ore nostro verbum Domini alligatum, sed liberum potius, ut corripiamus libere inquietos. . . . Oportet ut nos, qui vicem ejus (*i.e.*, Jesus) licet indigni exercemus in terris, ambulemus quemadmodum ambulavit, . . . Novit autem regia celsitudo, quod inter ipsas Dominicæ Nativitatis primitias, pacem angelus bonæ voluntatis hominibus nuntiavit, et in articulo passionis pacem Dominus in discipulos, quasi hæreditario jure transfudit, dum, quasi ultimum testamentum conficiens, inquit eis; Pacem meam do vobis . . . et . . . post resurrectionem suam hac primum voce ad discipulos fuit usus; Pax vobis, et iterum dico pax vobis, Ne igitur nos, qui sumus secundum Apostolum hæredes Dei, cohæredes autem Christi, relictæ nobis hæredatis exhibeamus indignos et gratiæ, . . . ostendamus ingratos, pacem evangelizare tenemur filiis pacis præsertim, . . ." Innocent speaks of the evils which have been caused by the dissension between him and John, not only to their respective kingdoms, but to the whole Christian people. He dwells on the horrors of war, the encouragement given to the Saracens and the ruin of souls. "Ne igitur sanguis tot populorum de nostris manibus requiratur, ne rei tot mortium, ut . . . videamur, si quod absit! *tanquam canes muti non valentes latrare* tacuerimus in tanta necessitate." He is sending the Abbot of Casemari and others to exhort him to make peace or a truce to enable a peace to be settled with John. "Alioquin, quantumcunque tam te quam ipsum in Domino diligamus, dissimulare tamen nulla ratione poterimus, quin ea, quæ dictus nuntius noster, juxta formam sibi datam a nobis, duxerit statuenda, faciamus inviolabiter observari." A similar letter (69) was sent to the king of the English.

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[1] Reg. VI. 163, 31st October 1203 (col. 177 D). "Nec hoc dicimus, tanquam nobis potestatem velimus indebitam usurpare, vel quidquam injungere quod ad officii nostri non pertineat potestatem, Quid enim monuimus, quid suggessimus ? . . . Certe si bene recolimus, ut faceretis pacem vel trengas, salva justitia utriusque . . . (col. 178 A). Quod enim evangelizare pacem ex injuncto nobis officio teneamur Psalmista nos docet." Innocent quotes other passages from the Scriptures on the necessity of preaching peace and on the penalties for disregard of the commands (col. 178 C, D). "Preterea, nullus dubitat sanæ mentis, quin nostrum sit de iis quæ ad salutem vel damnationem animæ pertinent judicare." He then dwells on the horrors of war, and urges his own responsibility should he not oppose such proceedings. He proceeds to touch on John's complaints (col. 179 C). "Ecce, conqueritur rex Angliæ, frater tuus ; . . . quod pecces in eum, . . . Corripuit te inter te aliquando et se solum, . . . frequenter commonuit, ut ab ejus desisteres læsione. Adhibuit quoque non solum duos vel tres testes, sed multos magnates induxit, ut inter te ac ipsum ruptæ pacis fœdera reformarent, . . . Verum quia per hoc apud celsitudinem tuam penitus nil profecit, quod in eum peccaveras, Ecclesiæ, juxta verbum evangelicum, nuntiavit. Ecclesia vero uti circa te maluit affectione paterna, quam judiciaria potestate. Ideoque serenitatem tuam per prædictum abbatem (*i.e.*, his envoy) non potestative corripuit, sed benigne commonuit, ut a fratris cessares injuria, et cum eo, vel in veræ pacis fœdera, vel congruentes treugarum inducias convenires. Quid igitur restat de cætero, nisi quod si Ecclesiam non audieris, sicut hactenus non audisti, te sicut ethnicum et publicanum, quod dolentes redicimus, habeat, et post primam et secundam correctionem evitet ? . . . Sed dices forsitan, quod non peccas in eum ; sed et ille replicabit in contrarium, quia peccas. Quid ergo in hujusmodi contradictionis articulo faciemus ? Nunquid, inquisita plenius et cognita veritate, procedere juxta mandatum Domini omittemus ? (col. 180 B). Si forsitan asseras quod non pecces in regem prædictum, sed in eum utaris potius jure tuo, cum ille queratur quod graviter pecces in eum . . . ne in hoc quasi dubio vel humanum præcipitare judicium, vel mandatum divinum negligere videamur, humiliter patiatis," . . . that his envoy and the Archbishop of Bourges "super hoc de plano cognoscat, non ratione feudi, cujus ad te spectat judicium, sed occasione peccati, cujus ad nos pertinet sine dubitatione censura." Should Philip disobey "per prædictum abbatem officii nostri debitum exsequemur."

[2] Vol. ii. pp. 219-20.

Innocent asserted his right to intervene in quarrels between secular rulers before and after his contest with Philip, but he did not endeavour to justify his action as based on a complaint by one of the parties. We shall cite a few cases. In 1199 there was a dispute regarding Borgo San Donino between Piacenza and Parma. Innocent wrote that "inasmuch as according to the apostle love is the fulness of law, dissension makes men transgressors of the divine law," and he directed his representative to require Piacenza and Parma to come to terms, and if they failed to do so of their own accord, to compel them, if necessary by excommunication, to submit to the Pope's judgments.[1] Here it will be observed that the mere fact of dissension is treated as a sin, and as giving the Pope ground for compelling submission to his judgment. In 1207 Innocent wrote the Florentines requiring them to make peace on reasonable terms with the Siennese, as the quarrel was the cause of "grave rerum dispendium," grave injury to men's bodies, and "immane" danger to their souls, while it belonged specially to the Pope, as vicar of Christ, to restore peace. He had accordingly instructed one of his cardinals to take the necessary action, and should either party prove contumacious, he was to deal with it by ecclesiastical censure.[1]

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[1] Reg. II. 39, 27th April 1195. To the Abbot of Lodi. "Cum plenitudo legis, secundum Apostolum, sit dilectio, profecto dissensio divinæ legis hominem constituit transgressorem." Innocent goes on to deal with the dispute between Picenza and Parma regarding Borgo San Donino and directs the abbot (col. 581 C and D) "per te et alios quos ad hunc necessarios cognoveris esse tractatum, ad eorum concordiam et pacem intendas, . . . Si vero desuper datum non fuerit ut, per admonitionem et exhortationem ipsorum et tuam, impleri valeat quod mandamus, tu per excom. potestatum, consulum et conciliariorum et principalium fautorum tam Placent quam Parmeno, ipsos Placen. et Parm. ad subeundum judicium nostrum sufficientissima in manibus tuis hinc inde præstita cautione . . . (col. 582 A) et eis insuper commineris quod, nisi mandatis paruerint apostolicæ sedis, manus nostras super eis curabimus aggravare."

In 1209, in a letter to the consuls and citizens of Genoa, Innocent dwells on the danger to souls, the injury to property, and the "personarum dispendium" caused by the quarrel between Genoa and Pisa, and on his duty to deal with those disregarding his orders. He refers also in his letter to the way in which the quarrel hindered relief being given to the Holy Land.[2]

The last letter we shall refer to, in this connection, is one addressed by Innocent to John in April 1214, a few months before the battle of Bouvines. In it Innocent directed John, on pain of ecclesiastical censure, to make a truce with Philip to last at least till after the General Council, summoned for 1215, was over, and it appears from the letter that he also wrote to Philip in similar terms. He gave these orders as the war between John and Philip prevented help being sent to the Holy Land and was causing other dangers, and he was therefore bound in virtue of his office to intervene. Besides ordering an immediate truce, Innocent directed that two arbitrators (mediatores pacis) be appointed to treat for a permanent peace. Should they fail, the two kings were to submit to Innocent's decision, and give guarantees that they would obey.[3] There is no reference to any complaint by either party, and it is singular Innocent should have ventured to give peremptory orders after his previous rebuff by Philip. Possibly he counted on the political situation to compel the parties to yield.

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[1] Reg. X. 86, 11th July 1208. "Cum ergo discordiæ tantæ causa in grande rerum dispendium, grave damnum corporum, et immane periculum animarum redundare noscatur, et ad nos tanto pertineat specialius revocare discordantes ad pacem quanto differentius præ cæteris hæreditamus eamdem, quibus eam mediator Dei et hominum Jesus Christus, cujus nos, licet indigni, vicem exercemus in terris, non solum nascendo per angelum nuntiavit, "*Gloria in excelcis Deo et in terra pax hominibus bonæ voluntatis* . . ." dicentem, verum etiam moriendo quasi testamento legavit, cum dixit; "*Pacem meam do vobis, pacem relinquo vobis* . . ." . . . ad ipsam, si desuper datum fuerit, paterna sollicitudine vos duximus reducendos . . . præfato cardinali dedimus in mandatis ut ad ea quæ præmisimus . . . insistat . . . in partem, si quam repererit contumacem, sublata appellatione, districtionis ecclesiasticæ promulgando censuram."

[2] Reg. XII. 55, 20th June 1209.

[3] S. 186, 22nd April 1214. "Cum ex guerra quæ vertitur inter te et . . . Philippum . . . impediatur Terræ Sanctæ succursus, . . . aliaque innumera timeantur ex ea pericula proventura, nos apostolicæ sedis servitii debito provocati, ad reformationem pacis intendimus interponere, . . . tibi ac præfato Francorum regi firmiter injungamus per censuram ecclesiasticam, vos, si necesse fuerit, compel-

The cases we have cited appear to show that Innocent held that as vicar of Christ he could require the rulers of States or cities at war with one another to cease hostilities and to submit to his judgment, even though neither party had appealed to him.

There was another class of cases in which Innocent frequently intervened—namely, where the interests of widows and minors were concerned. He describes himself as "debtor to widows and orphans"; and one of those whose wrongs he endeavoured to right was Berengaria, the widow of Richard I. In this capacity in 1204 he wrote John that he had given orders that unless he voluntarily did justice to Berengaria, he would be compelled to do so by ecclesiastical pressure.[1] Next year he wrote again on the same subject, as the representative of Christ, who is no acceptor of persons and who does justice to all, and accordingly directed John to carry out his agreement regarding Berengaria's dowry. Should John fail to do so, an inquiry was to be made and the proceedings referred to the Pope for orders.[2] In 1208 the dowry

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lendo ut pro tot et tantis periculis evitandis, treugas ineatis et observetis ad invicem saltem usque post generale concilium celebrandum; rebus in eo statu manentibus in quo erunt cum ipsæ treugæ a partibus firmabuntur. Et duo mediatores pacis absque malitia eligantur, qui fideliter interim tractent de concordia reformanda, quæ, si forte provenire non possunt, nostro vos arbitrio committatis, præstitis super his cautionibus."

[1] Reg. VI. 194, 4th January 1204. "serenitatem tuam rogamus attente et monemus, . . . quatenus, divinæ pietatis intuitu, et nostrarum precum obtentu, sæpedictæ reginæ (*i.e.*, Berengaria) oblata restituas universa, eidem super his taliter satisfaciens, quod majestatem divinam, quam per hæc graviter offendisti, valeas complacare, ac laudem et gloriam in conspectu hominum promereri. Alioquin, quia viduis et orphanis specialiter sumus in sua justitia debitores, tuæ saluti potius consulentes, . . . abbatibus, dedimus in mandatis, ut ipsi te ad restitutionem . . . et ad justitiam . . . coram eis plenariam exhibendam, monitione præmissa, per districtionem ecclesiasticam, appellatione remota, compellant."

[2] Reg. VII. 168, 15th December 1204. "Si judex, qui nec Deum timebat, nec hominem, verebatur, commotus ad instantiam viduæ conquerentis, de adversario suo vindictam fecit eidem, quanto magis nos a clamo-

had still not been paid, and Innocent wrote to John that if he did not admit any obligation to her, he should refer to the Pope, who as the vicar of Christ was inspired by God in his judgments. John had failed to appear before the Pope, though Berengaria had been represented, and Innocent could no longer postpone action. Should he not appear within a month all lands included in Berengaria's dowry would be placed under interdict.[1]

Shortly after his accession there was a remarkable case of papal intervention. Innocent gave as the ground of his action that by virtue of his office he was bound to give comfort to the afflicted, and he therefore ordered the release of Sibilla, widow of Tancred, and of others all imprisoned by the orders of Henry VI. in Germany.[2] It seems very unlikely that Innocent would have ventured to issue such orders except in the state of confusion in Germany due to the death of Henry VI. and the dispute as to the succession. Innocent not only ordered the release of Sibilla and other prisoners, but directed the recipients of his letter to excommunicate those holding the prisoners in custody, and to place the whole diocese in which they were imprisoned under interdict. There is no suggestion in the letter that the Pope had acted as

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ribus viduarum non debemus avertere aures nostras, qui, licet immeriti, ejus locum tenemus in terris, qui omnibus injuriam patientibus, sine personarum acceptione, facit judicium, et voce prophetica subveniri jubet oppresso, et viduam defensari ? "

[1] Reg. XI. 223, 21st January 1209. Innocent wrote John regarding Berengaria's dowry (col. 1538 B). "Verumtamen si te forsan existimes eidem in aliquo non teneri, coram nobis, qui personam hominis in judicio non accipimus, sed justum judicium, prout ille nobis inspirare dignatur qui omne judicium dedit Filio, judicamus, saltem ipsi debueras justitiam exhibere, ac non uti potentiæ magnitudine contra illam." This did not end the affair, but we have quoted enough to show how Innocent proceeded in such matters.

[2] Reg. I. 26. To the bishop of Sutri, &c. Undated, probably February 1198. "Verum ne compassionis nostræ solatium, qui patientibus ex susceptæ administrationis debito compati volumus et tenemur, penitus subtrahatur, quibus ipse Dominus jam videtur ex parte placatus." Innocent has ordered the archbishop and others to release Sibilla and other prisoners. "si mandatum nostrum forte non fuerit adimpletum, vos in detentores eorum excommunicationis sententiam proferatis et terras eorum, imo totam dioecesim, in qua nobiles ipsi tenentur vel ad quam fuerint forte translati, interdicto subatis."

feudal overlord of Sicily. He based his action entirely on his duty as Pope to comfort those in trouble.

Crusaders were under the special protection of the Church. We need only refer to a few letters issued in the first year of Innocent's reign as Pope. In one letter to the Archbishop of Magdeburg and his suffragans he directs that the property of all crusaders, from the time they take the cross, be taken under the protection of St Peter and of himself, as well as of all archbishops and bishops. He also gave instructions regarding the action to be taken in the case of wrongs done to crusaders placed under the protection of the Church during their "peregrinatio."[1] In the same year he gave orders to Philip of Swabia and to the Duke of Austria to return the ransom paid by Richard for his release while he was on his way back to England from Palestine.[2]

An important function of the Pope at this time was to confirm agreements between secular rulers. For obvious reasons it was often of great advantage to both parties to have an agreement solemnly confirmed by the head of the Church and recorded in his registers. A case in point is his confirmation at the request of the King of France of an agreement between him and Count Baldwin of Flanders. It was, Innocent wrote, his duty in virtue of his apostolic office to provide for the peace and quiet of all, but it was specially incumbent on him in this case owing to his affection for the king and owing to the advantage (commodum) to the Church when Philip and his kingdom were at peace. He confirmed the agreement as reasonable, drawn up by religious and prudent persons, properly authenticated and sworn to, and accepted by both parties (ab utraque parte recepta).[1] Frequently in confirming agreements the Pope laid down that any one infringing them should be dealt with by ecclesiastical censure (this would ordinarily be excommunication).[2]

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[1] Reg. I. 300, 27th June 1198. The letter commences, "Quanto gravioribus rerum et personarum periculis se opponunt qui relicta domo propria pro liberatione salutiferæ crucis et terræ sanctæ, . . . tanto circa tuitionem ipsorum et rerum suarum vigilantior cura nobis incumbit; cum tam ipsi quam res eorum sint, donec in sancta peregrinatione permanserint, specialiter sub protectione sedis apostolicæ constituti."

[2] Reg. I. 236, 31st May 1198, and 242, 30th May 1198 respectively, direct the return by the Duke of Swabia and by the Duke of Austria of money taken from Richard I.

Besides confirming agreements, we find other cases in which Innocent directed the clergy to enforce orders given by a prince—*e.g.*, he wrote the Archbishop of Guesen and his suffragans directing them to enforce the decision of the Duke of Silesia that Cracow should always be held by the eldest son of the reigning duke.[3]

We have already referred to the Vercelli case, in which Innocent laid down that injured persons were entitled to appeal to the Pope for redress where there was no other competent court or temporal superior to do them justice.[4] He quotes Alexius as urging this principle in an appeal to the Pope against his uncle, another Alexius, who had usurped the empire of the East.[1] In this case political considerations, and possibly also the difficulty of enforcing an award, may have prevented his taking action. A remarkable instance of intervention, going apparently far beyond the Vercelli case, occurred in 1205, when he directed the Archbishop of Armagh to deal with a complaint brought by one Norman noble in Ireland against another. The complainant alleged that he had been compelled by force to give up his property in Ireland and leave the country and abandon all his claims there. Innocent's orders to the archbishop were to inquire, and should he find that war had been levied unjustly on the complainant, the aggressor must restore the property taken and release him from his oath. Should he disobey the archbishop's orders, he was to be excommunicated, his lands placed under interdict, and the complainant released from his oath.[2]

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[1] Reg. I. 130, early in May 1198. "Licet ex injuncto nobis apostolatus officio cunctorum teneamur providere quieti et pacem inter singulos exoptare, quietem tuam et regni tui tanto specialius conservare volumus et debemus et inter magnificentiam regiam et homines suos firmæ pacis existere fœdera studiosius affectamus, quanto personam tuam specialiori diligimus in Domino charitate, et pacem tuam et regni tui ad Ecclesiæ commodum cognoscimus efficacius redundare. Ea propter chariss. in Christo fili, tuis justis precibus inclinati et petitionibus tuis, quantum cum Deo possumus, gratum impertientes assensum, felicis mem. Celestini papæ prædecessoris nostri vestigiis inhærentes, compositionem factam inter serenitatem tuam et dilectum filium nostrum Balduinum comitem Flandriæ pro pace perpetuo servanda, sicut rationabiliter facta est coram viris religiosis et prudentibus et scripto authentico roborata et firmata pluribus juramentis et ab utraque parte recepta auctoritate apost. confirmamus et præsentis scripti patrocinio communimus."

[2] *E.g.*, Reg. III. 40, 19th December 1200, between the Count of Flanders and the widow of the former count. "si quis, contra conventiones præmissas quas volumus et mandamus inviolabiliter observari, venire præsumpserit, vos, auctoritate nostra suffulti, temeritatem hujusmodi, per censuram, appellatione remota, curetis taliter castigare, quod, iniquitate repressa, pacis fœdera permaneant inconcussa, quæ non possent sine multorum dispendio violari."

[3] Reg. XIII. 82, 8th June 1210. fraternitati vestræ per apostolica scripta mandamus quatenus institutionem de majoritatis præeminentia, sicut ad utilitatem et pacem totius provinciæ dignoscitur esse facta, faciatis per censuram ecclesiasticam sublato appellationis obstaculo firmiter observari.

[4] *Vide* p. 152.

Among the most noteworthy incidents of the pontificate of Innocent III. is the Albigensian Crusade. The two great headquarters of Manichean forms of heresy, at the end of the twelfth century, were Southern France and Northern Italy, and specially the former. These forms of heresy had long engaged the attention of the ecclesiastical and of the secular authorities. As far back as 1022 a number of heretics had been condemned at a synod held at Orleans,[1] and the matter had repeatedly come before other provincial synods, some of them presided over by popes.[2] In 1179 the Lateran Council referred in one of its decrees to the open profession of heretical doctrines in Gascony and in parts of the county of Toulouse. The faithful were bidden protect the Christian population against the heretics. The property of heretics was to be confiscated, and it was declared that their rulers might lawfully enslave them. Those who took up arms against them were to receive some remission of the penalties of their sins, and they were to have from the Church the same protection as was given to crusaders.[3] Two years later Lucius III. at Verona, supported by Frederick I., anathematised the Cathari and other heretics, and on the advice of his bishops at the suggestion of the emperor, he directed that inquiries should be made by the clergy in every parish where heresy was suspected. Counts, barons, "rectors," &c., were to swear, if required by the archbishop or bishop, to help the Church against heretics and their supporters. Those disregarding the order were to be punished by excommunication, and their lands to be placed under interdict. Cities resisting the order were to be cut off from intercourse with other cities, and to be deprived of their bishoprics.[1]

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[1] Reg. V. 122, 16th November 1202 (col. 1127 A). "Nos autem imperiali prudentiæ taliter duximus respondendum, quod prædictus Alexius olim ad presentiam nostram accedens, gravem in nostra et fratrum nostrorum præsentia, multis nobilium Romanorum astantibus, proposuit quæstionem, asserens quod patrem ejus injuste ceperis, et feceris etiam nequiter excæcari, eos diu detinens carcerali custodiæ mancipatos, et quia ad superiorem nobis non poterat habere recursum, et nos, juxta Apostolum, eramus tam sapientibus quam insipientibus debitores, ei justitiam facere tenebamur. . . ." See also the Montpellier case referred to in a previous volume, where he justifies his legitimation of Philip's children by the fact that Philip had no superior in temporal things to whom he could apply (vol. ii. p. 213 f.).

[2] Reg. VIII. 114, 1st July 1205. Innocent directs the Archbishop of Armagh and other clerics to deal with the complaint of John de Courcy against H. de Lacey. Should it prove to be true that the former was wronged by the latter, "Cum igitur simus in eo loco, disponente Domino, constituti, ut, secumdum verbum propheticum, debeamus dissolvere colligationes impietatis, et fasciculos deprimentes ac dimittere eos qui confracti sunt, liberos et disrumpere omne onus," then the wrongdoer must restore what he had taken by violence, and must release his victim from the oaths extorted from him. Disobedience to be punished by excommunication and interdict.

Orpen, 'Ireland under the Normans,' vol. ii. chap. xvii., p. 141, gives an account of this quarrel, between John de Courcy and Hugh de Lacey.

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[1] Hefele. Con. Ges., vol. iv. p. 674 f. Second edition.

[2] L.c., p. 680, 687, 731, also vol. v. 345-6, 568, 598, 642-4. Leo IX. and Calixtus II. respectively presided over the synod of Rheims (IV. 731) and the Council of Toulouse (V. 345-6). See also Mansi, vol. xxi. col. 718, the decree of the synod at Rheims over which Eugenius III. presided in 1148.

See also l.c., col. 532 canon 23 of second Lateran Council.

[3] Mansi Con., vol. xxii., col. 231 f. The 27th decree "De hereticis" declares "Eapropter quia in Gasconia, Albegesio, et partibus Tolosanis, et aliis locis, ita hæreticorum, quos alii Catharos, alli Patrinos, alii Publicanos, alli aliis nominibus vocant, invaluit damnata perversitas, ut jam non in occulto, sicut aliqui, nequitiam suam exerceant, sed suum errorem publice manifestent . . . anathemati decernimus subjacere; et sub anathemate prohibemus ne quis eos in domibus, vel in terra sua tenere, vel fovere, vel negotiationem cum eis exercere præsumat." Similar penalties are prescribed for all who support them and "Relaxatos autem se noverint a debito fidelitatis et hominii ac totius obsequii; . . . Confiscisenturque eorum bona, et liberum sit principibus, hujusmodi homines subjicere servituti."

The decree proceeds to declare the privileges to be obtained by those who take up arms "biennium de poenitentia injuncta relaxamus" and "sicut eos, qui sepulchrum Dominicum visitant, sub ecclesiæ defensione recipimus."

Innocent held it to be one of his most important duties to deal with heretics,[2] as his office required of him to maintain the kingdom of God free from scandals.[3] In April 1198 he despatched a monk named Rainer to visit the South of France, and he ordered the ecclesiastical and secular authorities to help him. He ordered them in the case of obstinate heretics, excommunicated by Rainer, to confiscate their property and to banish them. Should the heretics stay on after Rainer had issued an interdict, the nobles were, as became Christians, to deal still more severely with them. Rainer had received from the Pope full powers of excommunication and interdict, and the princes must not be displeased at such severity, as Innocent was determined to do all in his power to extirpate heresy. Any one who favoured or shielded such heretics was also to be excommunicated and was to receive the same punishment as those whom they favoured.[1]

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[1] Mansi Con., vol. xxii., col. 478. Decree at synod of Verona 1181 against heretics. "Ad hæc, de episcopali consilio, et suggestione culminis imperialis, et principum ejus, adjecimus, ut quilibet archiepiscopus vel episcopus, per se, vel archdiaconum suum, aut per alios . . ." make inquiry regarding heretics and any found be dealt with by the bishop. Refusal to take an oath "superstitione damnabili" to suffice for condemnation as an heretic. "Statuimus insuper, ut comites, barones, rectores, consules, civitatum et aliorum locorum, juxta commonitionem archiepiscoporum et episcoporum, præstito corporaliter juramento promittant, quod in omnibus prædictis fortiter et efficaciter, cum ab eis fuerint exinde requisiti, ecclesiam contra hæreticos, et eorum complices adjuvabunt, et studebunt bona fide, juxta officium et posse suum, ecclesiastica similiter et imperialia statuta, circa ea quæ diximus, executioni mandare. Si vero id observare noluerunt, honore, quem obtinent, spolientur; et ad alios nullatenus assumantur; eis nihilo minus excommunicatione ligandis, et terris ipsorum interdicto ecclesiæ supponendis. Civitas autem quæ his decretalibus institutis duxerit resistendum, vel contra communitionem episcopi punire neglexerit resistentes; aliarum careat commercio civitatum, et episcopali se noverit dignitate privendam."

[2] Reg. II. 63, 7th May 1199. "Inter sollicitudines nostras illa debet esse præcipua, ut capiamus vulpeculas quæ moliuntur vineam Domini demoliri, species quidem habentes diversas, sed caudas ad invicem colligatas, quia de vanitate conveniunt in idipsum."

[3] Reg. IX. 208, 20th December 1206 (col. 1050 C). "Cum igitur, ex injuncto nobis officio, de regno Dei collegere scandala teneamur, et quantum possumus, hujusmodi bestias (*i.e.*, heretics) oppugnare."

In the same year he confirmed orders issued by his legate in Lombardy forbidding the admission of heretics to any dignities; nor were they to be allowed to take part in elections. All podestas, consuls, and members of official bodies were to swear to maintain these orders. In the same letter he confirmed the authority given by the legate to the Archbishop of Milan to enforce these provisions by excommunicating any who might prove contumacious, and by placing their lands under an interdict.[2] In a letter to the King of Hungary the Pope stated the penalties he enforced against heretics (in his own territories), and asked him to banish them and to confiscate their property.[3]

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[1] Reg. I. 94, 21st April 1198. "Ad hæc, nobilibus viris principibus, comitibus et universis baronibus et magnatibus in vestra provincia constitutis præcipiendo mandamus et in remissionem injungimus peccatorum, ut ipsos benigne recipientes pariter et devote, eis contra hæreticos tam viriliter et potenter assistant, ut ad vindictam malefactorum, laudem vero bonorum, potestatem sibi traditam probentur laudabiliter exercere, et si qui hæreticorum ab errore suo commoniti noluerint resipiscere, postquam per prædictum fratrem Rainerium fuerint excommunicationis sententia innodati, eorum bona confiscent et de terra sua proscribant, et si post interdictum ejus in terra ipsorum præsumpserint commorari, gravius animadvertant in eos, sicut decet principes christiannos, . . . Dedimus autem dicto fratri R. liberam facultatem ut eos ad id per excommunicationis sententiam et interdictum terræ appellatione remota compellat, nec volumus ipsos ægre ferre aliquatenus vel moleste si eos ad id exsequendum tam districte compelli præcipimus, cum ad nil amplius intendamus uti severitatis judicio, quam ad extirpandos hæreticos . . ." Receivers and favourers of heretics are to be dealt with as severely as heretics by the Pope's legate.

[2] Reg. I. 298, 15th June 1198. His legate in Lombardy "instituit ut de cætero hæretici ad consilia et dignitates Lombardiæ nullatenus admittantur nec eligendi alios eis arbitrium conferatur nec in eligendis personis ad eas vocem debeant aliquam obtinere. Ad id autem servandum in posterum potestates, consules, consilia Lombardiæ astringendos constituit juratoria cautione et te ad recipienda juramenta eorum in quibusdam civitatibus deputavit, indulta tibi (the Archbishop of Milan) libera facultate contumaces excommunicationis et terras eorum interdicti sententiis feriendi." These orders were confirmed by the Pope.

[3] Reg. III. 3, 3rd October 1200. In a letter of the previous year (Reg. III., 25th March 1199) to Viterbo, in the papal territories, Innocent had directed that not only heretics but all who favoured them in any way were to be punished. They were to be avoided by

Returning to Innocent's action with regard to heresy in France, we find that for several years he endeavoured to deal with the heretics of Toulouse and of the neighbouring districts through their rulers, but relations became more and more strained. In 1207 Raymond, the Count of Toulouse, was excommunicated by Peter of Castelnau, the papal legate, and Innocent wrote the count, endorsing his legate's action and threatening to take away lands held by him of the Church, and to summon the neighbouring princes to take away his other lands.[1] A few months later, 15th January 1208, Peter was murdered. The Pope, acting on suspicion of his complicity, again excommunicated the count, and a crusade was started against the heretics.[2] Innocent also authorised the seizure of his lands by any Catholic, subject to the rights of the overlord. The Pope had before this made several ineffectual attempts to get Philip, King of France, to take the matter up, but Philip was not prepared to run any risks with King John of England still on his hands, and he even attempted to limit strictly the number of crusaders from

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all. Any one guilty of heresy became ipso facto "infamis," and incapable of holding public office and of giving evidence, nor could such a one inherit. In addition to other penalties, in papal territories their property was to be confiscated. Innocent also directed that similar penalties should be imposed elsewhere by the secular powers. Failure to inflict such punishment would be dealt with by ecclesiastical punishments. The justification for such severity was that heretics "Dei Filium Jesum Christum offendunt, a capite nostro, quod est Christus, ecclesiastica debent districtione præcidi, et bonis temporalibus spoliari, cum longe sit gravius æternam quam temporalem lædere majestatem."

[1] Reg. X. 69, 29th May 1207 (col. 1163 C). With regard to neighbouring princes the threat is "universis circumpositis principibus injungemus ut in te velut in hostem Christi et Ecclesiæ persecutorem insurgant, retinendo sibi quascunque terras de tuis poterunt occupare."

[2] Reg. XI. 26, col. 1357 B, not dated, but sometime before the middle of March 1208. Although the Count of Toulouse was already excommunicated, yet "quia tamen certis indiciis mortis sancti viri (*i.e.*, Peter de Castelnau) præsumitur esse reus . . . ob hanc quoque causam anathematizatum eum publice nuntietis . . . auctoritate apostolica denuntietis ab eo interim absolutos et cuilibet catholico viro licere, salvo jure domini principalis, non solum persecui personam ejusdem, verum etiam occupare ac detinere terram ipsius."

In October of the same year (Reg. XI. 156) Innocent announced that crusaders against "provinciales hæreticos" were under the protection of the Church.

his kingdom, but had to withdraw his orders in view of the popular enthusiasm.[1] He also took exception to the Pope's orders regarding the count's lands.

After the conquest of Baziers by the crusaders, they bestowed it on Simon de Montfort, their leader. This grant was confirmed by Innocent, who also gave orders that each house should pay annually three denarii to the Holy See as a sign that Simon de Montfort would maintain them in devotion to the Holy See and to the true Church.[2] When later on he was pressed to agree to the confiscation of all the lands of Raymond of Toulouse, he refused on the ground that he had not so far been convicted of heresy. Innocent, notwithstanding his treatment of the Count of Toulouse in 1208 in connection with the murder of the papal legate,[1] yet had doubts in the matter,[2] and was disinclined to press matters too far, but the more violent party in the Church prevailed, and at the Lateran Council of 1215 the lands already taken by the crusaders from heretics and those who had supported them, including those of Raymond, Count of Toulouse, were made over to Simon de Montfort "ut eam teneat ab ipsis a quibus de jure tenenda est," thus reserving the rights of the suzerain, the King of France. Raymond was deprived of his lands, as he had failed to deal with heretics and "ruptarios."[3] A decree was also passed regarding heretics generally, providing for the confiscation of the property of any convicted of heresy or of failure to deal with heresy. The punishment in the case of contumacy, to be inflicted by the Pope, was the release of vassals from their obedience, and the lands of the rulers were to be open to occupation by Catholics who extirpated the heretics, subject always to the rights of the overlord. Provision was also made for annual inquiries by the bishops in any parish where heresy was suspected.[1] The Lateran Council of 1215 thus ratified the action already taken in the Albigensian Crusade.

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[1] Letters of Pope to Philip Augustus calling on him to suppress heresy in Languedoc. Reg. VII. 79, col. 362 C, 28th May 1204. Innocent directs the king if the nobles or cities will not eject the heretics from their lands or receive or favour them "ipsorum bona confisces, et totam terram eorum domanio regio non differas applicare."

Reg. VII. 186, 16th January 1205; Reg. VII. 212, 7th February 1205; Reg. X. 149, col. 1297 D, 17th November 1207. In this last letter the Pope directs "illa valeat remissio peccatorum quam his qui laborant pro terræ sanctæ subsidio."

Reg. XI. 28, col. 1358 D, March 1208. Innocent calls on the king to punish the murder of the legate and to add, to the sword of the pope, his sword "quem ad vindictam malefactorum, laudem vero bonorum a Domino accepisti, gladio nostro junge." He directs him should the Count of Toulouse not repent, to drive out the count and those who support him, and to replace the heretics by Catholics.

Reg. XI. 229, 3rd February 1209. Innocent begs the King of France to appoint some one to lead the crusaders.

For Philip's refusal to take part in this crusade see Delisle, 'Catalogue des Actes de Philippe Auguste,' p. 512, No. 1069; and for his attempt to limit the number of crusaders, see Vic and Vaissete, 'Histoire Generale de Languedoc,' ed. of 1879, vol. viii. 142. For Philip's objection to the confiscation of Raymond's lands, see Delisle, l.c., p. 512 f. 1085. Philip writes, "De eo autem quod vos predicti comitis terram exponitis occupantibus, sciatis quod a viris litteratis et illustratis didicimus quod id de jure facere non potestis, quousque idem de heretica pravitate fuerit condempnatus. Cum autem inde condempnatus fuerit, tantum demum id significare debetis et mandare ut terram illam exponamus tanquam ad feodum nostrum pertinentem."

[2] Reg. XII. 122, 12th November 1209. Innocent confirms the decision of the chiefs of the crusading armies and of his legates, to confer Carcassone and Bourges on Simon de Montfort "tibi et hæredibus tuis in fide catholica et devotione sedis apostolicæ permanentibus auctoritate apostolica confirmamus." . . . The Pope further directs payment of 3 denarii yearly for each house to the Holy See, "Ad indicium . . . quod terras ipsas in devotione apostolicæ sedis et sancta religione conservare disponas."

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[1] *Vide* p. 179, note 2.

[2] Reg. XV. 102, June 1212. Innocent to his legates. "Licet Raimundus Tolosanus comes in multis contra Deum et Ecclesiam culpabilis sit inventus . . . quia tamen nomdum est damnatus de hæresi vel de nece sanctæ memoriæ Petri de Castronovo, etsi de illis sit valde suspectus . . . non intelligimus qua ratione possemus adhuc alii concedere terram ejus, quæ sibi vel hæredibus suis abjudicata non est."

[3] Mansi Con. XXII., cols. 1069 and 1070. Decree passed at the Lateran Council of 1215 regarding Albigensian territory. "sacro consulto concilio ita duximus providendum: ut Raymundus Tolosanus comes, qui culpablis repertus est in utroque (*i.e.*, as regards heretics and "ruptarios" in the Narbonne province), nec unquam sub ejus regimine terra possit in fidei statu servari, sicut a longo tempore certis indiciis est compertum, ab ejus dominio, quod utique grave gessit, perpetuo sit exclusus," an allowance being given him and provision being made for his wife. "Tota vero terra quam obtinuerunt crucisegnati adversus hæreticos, credentes, et fautores ac receptores eorum, cum Monte Albano, atque Tolosa, quæ magis hæretica labe corrupta, dimittatur et concedatur (salvo per omnia catholicorum jure virorum, mulierum, et ecclesiarum) comiti Montis-fortis viro strenuo et catholico, qui plus ceteris in hoc negotio laboravit, ut eam teneat ab ipsis a quibus de jure tenenda est. Residua autem terra, quæ non fuit a crucesignatis obtenta, custodiatur ad mandatum ecclesiæ," to provide for the young son of the Count of Toulouse as might hereafter seem expedient.

It will be observed that Raymond of Toulouse was not deposed for heresy, but for his failure to suppress heresy, and the suppression of heresy was declared a duty incumbent on rulers: neglect was punishable by the loss of their dominions. Heresy hunting was also now made a duty incumbent on the bishops of the Church.

The principles were those on which Innocent had acted throughout his pontificate, though he was much more inclined to mercy in giving effect to them than the more extreme, and possibly even than the majority of the clergy.

The exercise of direct temporal power by Innocent was confined to Italy. We shall deal hereafter with his demands based on imperial grants, and need only refer very briefly to his one material reference to Constantine's donation. This was in a sermon on St Sylvester's Day, and we may assume therefore was primarily intended for an Italian audience. He told how the Pope, St Sylvester, had cured Constantine from leprosy at the time of his baptism, and how thereafter Constantine had made over to the Roman See the city (Rome), the senate, his subjects, and the whole of the West, and had then retired to Byzantium and contented himself with the empire of the East. Sylvester, from reverence for the ecclesiastical crown, or rather from humility, would not accept the crown which Constantine had offered, but used instead of a royal diadem the circular orphery. It was in virtue of his pontifical authority that the Pope appointed patriarchs, primates, metropolitans, and other ecclesiastical dignitaries; while in virtue of his royal powers he appointed senators, prefects, judges, and notaries.[1] In view of the interpretation by Innocent of the donation, it is singular that he should apparently never have made use of it in putting forward territorial claims.

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[1] Mansi Con., vol. xxii., col. 987. Canon 3 lays down, "Si vero dominus temporalis requisitus et monitus ab Ecclesia, terram suam purgare neglexerit ab hac hæretica fœditate, per metropolitanum et ceteros comprovinciales episcopos excommunicationis vinculo innodetur. Et, si satisfacere contemserit infra annum, significetur hoc summo pontifici; ut extunc ipse vassallos ab ejus fidelitate denunciet absolutos, et terram exponat catholicis occupandam, qui eam exterminatis hæreticis sine ulla contradictione possideant, et in fidei puritate conservent; salvo jure domini principalis, dummodo super hoc ipse nullum præstet obstaculum, nec aliquod impedimentum opponat; eadem nihilo minus lege servata circa eos qui non habent dominos principales." The decree further provides that every archbishop and bishop was personally to make inquiries yearly in every parish from which heretics were reported.

Besides lands directly subject to the Pope's temporal power, there were many countries in which the Roman Church had at one time or another claimed feudal superiority for the Pope. Innocent was careful to claim any "census" to which he might hold the Pope to be entitled,[2] but it was principally in the case of the Sicilian and English kingdoms (after the surrender by John) that he supported his action, as justified by his feudal superiority.[3] In both cases it was of importance to the Church that no assistance should be given by the kingdoms concerned to a hostile emperor, and we can understand Innocent's enthusiastic acceptance of John's surrender, inspired by the Holy Spirit.[1] Later on, after Bouvines, the Pope's position as overlord gave him a legal standing when he intervened between the king and his barons, and finally declared null and void the provisions of Magna Carta.[2]

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[1] M. P. L., vol. 217, col. 481. Sermones de Sanctis. Sermo VII. In Festo D. Silvestri Pontificis Maximi. "Fuit ergo B. Silvester Sacerdos, non solum magnus, sed maximus, pontificali et regali potestate sublimis. Illius quidem vicarius, qu iest 'Rex regum . . . secundum ordinem Melchisedech' ut spiritualiter possit intelligi dictum ad ipsum et successores illius, quod ait beatus Petrus apostolus primus et præcipuus prædecessor ipsorum; 'Vos estis genus electum, regale secerdotium (1 *Petr.* 2).' Hos enim elegit Dominus, ut essent sacerdotes et reges. Nam vir Constantinus egregius imperator, ex revelatione divina per beatum Silvestrum fuit a lepra in baptismo mundatus, Urbem pariter et senatum cum hominibus et dignitatibus suis, et omne regnum Occidentis ei tradidit et dimisit, secedens et ipse Byzantium, et regnum sibi retinens Orientis. Coronam vero capitis sui voluit illi conferre; sed ipse pro reverentia clericalis coronæ, vel magis humilitatis causa, noluit illam portare; verumtamen pro diademate regio utitur aurifrigio circulari. Ex auctoritate pontificali constituit patriarchas, primates, metropolitanos, et præsules; ex potestate vero regali, senatores, præfectos, judices et tabelliones instituit. Romanus itaque pontifex in signum imperii utitur regno, et in signum pontificii utitur mitra; sed mitra semper utitur et ubique; regno vero, nec ubique, nec semper; quia pontificalis auctoritas et prior est, et dignior et diffusior quam imperialis."

[2] *E.g.*, Reg. I. 448, 11th December 1198. Innocent required from the King of Portugal the payment of the "census" due, and concludes "quanto fortius peccare videntur qui ejus quæ caput est omnium et magistra non sine præsumptione sacrilega jura invadere non formidant."

[3] We are not here dealing with the exercise of feudal powers in the papal states under the Pope's direct control.

As we have seen,[3] papal support had been forthcoming for John in 1202 when war was threatening between Philip and John, but it was now far more sustained and emphatic; and no doubt this was partly because John had become a vassal of the Roman See. Moreover, after John's surrender of his kingdom to the Pope, we find not only Innocent but also the barons and John urging this as a ground for papal intervention, and the feudal relationship was clearly treated by all parties as an important feature of the situation. Louis in his statement of his claims to the English Crown referred to it, but denied that John was Richard's lawful successor, and argued that in any case the surrender was contrary to his oath and made without the advice and consent of his barons.[4]

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[1] Reg. XVI. 79, 4th July 1213. To John regarding his surrender of his kingdom and Ireland. "Quis enim te docuit, quis induxit nisi Spiritus ille divinus."

[2] It is difficult to understand Innocent's failure to secure himself against an alliance of John with the Emperor Otto against France in 1214. Had Bouvines been a French defeat, it seems very unlikely that John would have continued to submit to the papacy. Unfortunately, the register for 1214, which might have thrown some light on the subject, has not survived.

[3] See p. 162.

[4] In Sup., 205-6, 19th March 1215, before Magna Carta was signed, Innocent expressed his regret at hearing of the differences between John and some of his magnates, and at the action taken by the latter. "Ne igitur ipsius (*i.e.*, John's) bonum propositum hujusmodi occasionibus volueritis impedire, Nos, omnes conspirationes et conjurationes præsumptas a tempore subortæ discordiæ inter regnum et sacerdotium, apostolica denuntiamus auctoritate cassatas, et per excommunicationis sententiam inhibemus, ne tales de cætero præsumantur, vos monendo prudenter et efficaciter inducendo, ut per manifesta devotionis et humilitatis indicia ipsum regem vobis placare et reconciliare curetis, exhibentes ei servitia consueta quæ vos et prædecessores vestri sibi et suis prædecessoribus impendistis. Ac deinde si quid ab eo duxeritis postulandum non insolenter, sed cum reverentia imploretis, regalem ei conservantes honorem. . . ." He proceeds to implore the king that "vos (*i.e.*, the magnates) benigne pertractet, et justas petitiones vestras clementer admittat." (See

Important, however, as the feudal relation may have been in the case of England, it was not on it that the Pope mainly relied. Even when he declared null and void the provisions of Magna Carta he gave his orders as vicar of Christ, and the disregard by the barons of the papal rights is only one of several grounds for the orders he passed.

also Sup. No. 197, dated 5th November 1214, and No. 208, dated 1st April 1215. In the latter letter he directs the English magnates to pay the scutage due for the army which John took to Poitou in 1214.) Besides the frequent references by the Pope to John's surrender of his kingdom (*e.g.*, Rymer's 'Fœdera,' vol. i. 1, 116), it is also referred to by the barons when seeking the Pope's support against John—*vide e.g.*, Mauclerk in a letter to John some time in 1214 (l.c., p. 120).

On the 29th May 1215 (l.c., p. 129) John wrote Innocent complaining of the behaviour of the magnates and barons of England, while the Archbishop of Canterbury and his suffragans had disregarded the Pope's orders to assist him, all this notwithstanding that "Nos vero, attendentes præmissa, asserebamus nostris quod terra nostra patrimonium erat beati Petri; et eam de beato Petro, et ecclesia Romana, et de vobis tenebamus."

On the 13th June following, John signed the Magna Carta, and seventy-one days later, on the 25th August (p. 136), Innocent issued his bull denouncing it among other things as "in apostolicae sedis contemptum." It is not as a mere feudal lord he cancels it, but "Quia vero nobis a Domino dictum est in Propheta, Constitui te super gentes et regna, ut evellas et destruas, ut ædifices et plantes . . . nos, tentæ malignitatis audaciam dissimulare nolentes, in apostolicae sedis contemptum, regalis juris dispendium, Anglicanæ gentis opprobrium, et grave periculum totius negotii crucifixi . . . ex parte Dei Omnipotentis . . . auctoritate quoque beatorum Petri et Pauli, apostolorum ejus, ac nostrâ, de communi fratrum nostrorum consilio, compositionem hujusmodi reprobamus . . . sub interminatione anathematis prohibentes, ne dictus Rex eam observare præsumat." On the same day he also wrote to the barons of England that the king had been prepared to do justice "in curia suâ, vobis, per pares vestros . . . vel coram nobis ad quos hujus causæ judicium, ratione dominii, pertinebat; . . . Undê, cum nichil horum dignati fueritis acceptare, ad nostram audientiam appellavit, seipsum ac regnum, cum omni honore ac jure suo, apostolicæ protectioni supponens; publicè protestando quod, cum ejusdem regni dominium ad Romanam ecclesiam pertineret, ipse nec poterat, nec debebat, quicquam de illo in nostrum præjudicium immutare. Cum illa igitur compositio qualis qualis, ad quam per vim et metum induxistis eundem, non solum sit vilis et turpis, verum etiam illicita *et iniqua, ut merito* sit ab omnibus reprobanda, maximè propter modum: nos qui tam Regi quam regno tenemur et spiritualiter et temporaliter providere" directs them "ut renuncietis compositioni hujusmodi . . . ut idem Rex, . . . per seipsum benignè concedat quicquid de jure fuerit concedendum; ad quod etiam nos ipsum efficaciter inducemus. Quoniam, sicut nolumus quod ipse Rex suo jure privetur, ita volumus ut ipse a gravamine vestro desistat."

Innocent before the end of the year (l.c., p. 138, the date is not given), wrote regarding the failure of the

Innocent was not a man to throw away any weapon which might some time or other prove serviceable, but it was on his powers as vicar of Christ that his policy seems to have been based, and as we have seen, his claim to a right of intervention in case of disputes gave him ample opportunity for the exercise of those powers.

Archbishop of Canterbury and some of his suffragans to give proper support to John, whose kingdom "ad Romanam ecclesiam ratione dominii pertinere dinoscitur."

In the same letter he gave orders to excommunicate the disturbers "Regis ac regni Angliæ" along with their accomplices and supporters (fautoribus), and to place their lands under interdict.

On the 16th December 1215, Innocent announced the excommunication of a number of the barons by name. In this document (l.c., p. 139) he mentions that the excommunication took place at a general council (*i.e.*, the Lateran Council of 1215), at which "excommunicavimus . . . barones Angliæ cum adjutoribus et fautoribus suis, qui Johannem illustrem Regem Anglorum cruce signatum et vassallum Romanæ ecclesiæ persequuntur; molientes ei regnum auferre, quod ad Romanam ecclesiam dignoscitur pertinere."

Louis, in a letter to the monastery of Canterbury in 1216, reproducing his arguments before the assembly convened at Melun in April by his father (l.c., p. 140), after denying John any right to the succession, dealt with the surrender of the kingdom. "Ad hoc cum præfatus Johannes in coronatione suâ solempniter, prout moris est, jurasset, se jura et consuetudines ecclesiæ et regni Angliæ conservaturum, contra juramentum suum, absque consilio vel consensu baronum suorum, idem regnum, quod semper fuit liberum, quantum in ipso fuit, domino Pape subjecit et fecit tributarium."

CHAPTER II.

INNOCENT III. AND THE EMPIRE.

We have dealt in our last volume with the relations between the papacy and the empire down to 1177, when Frederick, in the Peace of Venice, recognised Alexander III. as the legitimate Pope. The Peace of Venice ended a long chapter in the history of the relations between the popes and the emperors, beginning with the deposition of John XII. by Otto I. in 963, and ending with Frederick's unsuccessful attempt to have a disputed election decided by a council summoned by the emperor.

In the thirteenth century we shall find the empire on the defensive, except during the last stages of the struggle between Frederick II. and Innocent IV. The emperors no longer claimed special powers in relation to the Church, save so far as their duties as "advocatus" might entitle them to make demands on inhabitants of the papal states. But we shall find the papacy pressing ever new claims to superiority over the empire. On the other hand, it was the acquisition of Sicily by Henry VI. through his marriage to Constance, the sister of William I., and heiress to William II. her nephew, that forced the papacy into a life and death struggle with the Hohenstauffen. It was this that compelled them openly, or secretly, to support the Lombard League against Frederick II., and finally to call in the help of a French prince to oust the Hohenstauffen from the Sicilian kingdom, and to take their place.

From the time of Gregory VII. popes had sought, directly or indirectly, to influence the election by the German princes of their king, and they had on various occasions confirmed or approved their choice.[1] The papal claims were placed by Innocent III. on a legal basis, and they were still further developed by his successors. In the course of the thirteenth century the papacy claimed the right to forbid the election of persons they considered unsuitable, to examine the regularity of electoral proceedings, and to decide when there was a disputed election which candidate was to be preferred. In one case, at all events (that of Henry Raspe, the Landgrave of Thuringia), the electors were told by Innocent IV. whom it was their duty to elect. It was largely owing to papal influence that, in the course of the century, relationship to the last ruler was treated as a serious objection. Before the thirteenth century there were only two cases in which a successful competitor for the kingdom did not, in part at all events, owe his selection to his near relationship to the king he succeeded.[2] Claims were gradually developed by the popes during this century to a right to exercise imperial powers during a vacancy in the empire. These claims were not acceptable to the majority of the German princes, as will appear in the course of our narrative. It was also during the thirteenth century that the number of electors was reduced to seven. The history of the process is very obscure, but by the end of the century it seems to have been generally believed that the electoral body, consisting of seven electors, had been established by Gregory V.[3]

After peace with the papacy had been restored in 1177, relations between the Pope and the emperor were, on the whole, friendly; but the question of the rights of the Church under Matilda's legacy was not settled, and Frederick failed in an attempt to get Lucius III. to crown his son Henry, who was already king, as emperor. The Pope is said to have objected on the ground that it was not suitable (conveniens) that there should be two emperors at the same time.[1] Lucius was succeeded in 1185 by Urban III., the Archbishop of Milan, a Milanese, and very hostile to the emperor. A concession refused by Lucius was not to be obtained from Urban, and in 1186 Frederick sought to obtain his end by declaring Henry VI., Cæsar, evidently as indicating the future emperor.[2] By the time of Urban's death, the very serious situation in Palestine was known in Europe, and probably influenced the cardinals in electing as Pope one known to be a friend of the emperor's. News of the fall of Jerusalem was received in Italy soon after Gregory's accession, and Gregory's short pontificate was spent in an effort to unite Christendom in a crusade. For this he was prepared to make great concessions, from the papal point of view. In November he wrote Henry, addressing him as "emperor elect of the Romans," evidently to indicate that the papacy would waive its objections to his promotion.[3] Gregory died after a few months, but Clement III., following the policy of his predecessor, agreed in 1189 to the imperial coronation of Henry and his wife.[4] Frederick died, however, before this could take place, and Henry was sole emperor when crowned by Cœlestine in 1191.

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[1] As regards Gregory VII., see vol. iv. .p. 208 for his instructions regarding the election of a successor to Rudolf.

A papal legate was present, and took part in the proceedings at the time of Lothair's election.

A papal legate was present at the very irregular proceedings when Conrad III. was elected, and assured the princes that the Pope would accept him. After the election he crowned Conrad at Aix.

Eugenius III. wrote Frederick I. approving him as king, though not asked for his approval by Frederick.

[2] The two cases are those of Henry I. and Lothair.

[3] Cf. 'De Regimine Principum,' iii. 19; by Ptolemy of Lucca (see p. 24).

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[1] M. G. H., SS. xvii. Ann. Colon., 791. "Unde cum imperator vellet. ut imperiali benedictione sublimaretur, fertur papa respondisse ex consilio quorumdam principum et cardinalium; non esse conveniens, duos imperatores præesse Romano imperio." M. G., Sec. xxi. Similarly Arnold of Lubeck iii. 11. Dicebat enim aplicus, non posse simul duos imperatores regnare, nec filium imperialibus insigneri, nisi ea ipse prius deposuisset.

[2] See on the subject Tœche, 'Heinrich VI.,' Erste Beilage II.

[3] M. G. H., Const. I. 411, 29th November 1187. Gregory addresses a letter to Henry, "Gregorius . . . filio Heinrico illustri regi, electo Romanorum imperatori."

[4] M. G. H., Const. I., No. 323, 10th April 1189. Letter of Frederick I. to Clement III., "Ex litteris per fideles nuntios nostros . . . a sanctitate vestra nobis transmissis, et ex verbis que ab ore vestro audierunt intelleximus, paratam et promptam animo vestro consistere voluntatem, predilecto filio nostro H. illustri Romanorum regi augusto sueque nobilissime consorti, karissime videlicet

Before Henry's coronation as emperor, William II. of Sicily had died on the 18th November 1189. Homage had been given to Constance about fifteen years before this in case of William II. leaving no direct heirs,[1] and after his death some of the barons, including Tancred, a grandson of Roger II., but not by legitimate descent, held a meeting at Troy and offered the crown to Constance and Henry.[2] Mainly owing to the opposition of the chancellor, Tancred himself was induced to accept the throne, and was crowned in January 1190 at Palermo. Clement appears to have favoured Tancred, but did not actually invest him with the kingdom.

Clement died in March 1191, and was succeeded by Cœlestine III. Henry was at this time close to Rome on his way to be crowned before asserting his claims to Sicily, both as husband of Constance and as emperor. His coronation was delayed by Clement's death, but finally took place on the 15th April, after he had made over Tusculum to the Pope, as required by Cœlestine.[3] Immediately after the coronation, Henry proceeded to invade the Sicilian kingdom, notwithstanding the Pope's opposition. The expedition finally broke down over the siege of Naples. Henry had to return to Germany owing to troubles there, and Clement at last in June 1192 invested Tancred with the Sicilian kingdom.

Tancred died in 1194, leaving an infant son as his heir, and by the end of the year the whole kingdom was in Henry's possession, and he and Constance were crowned at Palermo on Christmas Day.

A few days later Henry accused Tancred's family, the

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filie nostro Constantie Romanorum regine auguste, nullo mediante dubio vel impedimento, coronam imponendi." Similarly in a letter of Henry's, dated 18th April (No. 324).

[1] See on the subject of the right of inheritance to William, Haller in his 'Heinrich VI. u. die römische Kirche,' M.I.O.G., vol. xxxv. p. 425 f.

[2] See l.c., p. 547 f.

[3] The surrender of Tusculum had been promised in 1189, and we do not know why a German garrison was in occupation. The Pope, himself a Roman, handed it over to the Romans, who at once destroyed it, and treated the inhabitants with barbarous cruelty.

Archbishop of Salerno, and others of conspiring against him, and they were sent in custody first to Apulia, and later on to Germany. There was a second and very serious conspiracy about February 1197, which was put down with great severity and cruelty, even persons imprisoned in Germany in connection with the first rising suffering for a second rising in which they could not have been implicated.

In connection with Henry's coronation as emperor in 1191, it is worth noticing that Innocent III. in his 'Deliberatio,'[1] drawn up in 1201, makes a somewhat obscure reference to the behaviour of Henry VI. at the time of his coronation, seeming to imply that Henry asked Cœlestine to invest him with the empire. According to Innocent, Henry VI., having at his coronation received the crown, withdrew, and after going a short way (aliquantulum abscessisset), returned (rediens tandem ad se) and sought to be invested by Cœlestine with the empire by the golden palla (per pallam auream).[2]

Henry made a serious attempt, which at one time seemed on the point of succeeding, to make the succession hereditary in the Hohenstauffen family. He got the consent of a number of the German princes, but was strongly opposed by Adolf, the Archbishop of Cologne.[1] Henry endeavoured to secure his object against any German opposition by requesting the Pope to crown his son as king. He was defeated by the Pope's refusal to lend himself to the scheme, and finally Henry had to be satisfied with the election by the princes in 1197 of his infant son Frederick as king. Finally, even Adolf, the Archbishop of Cologne, accepted the election.[2] Henry's youngest brother, Philip, was on his way to bring the child to Germany to be crowned, when news reached him at Montefiascone in Central Italy of Henry's death. There followed a general rising against the Germans, and Philip had to retire hastily to Germany without his nephew.

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[1] The Deliberatio (Reg. d. N. 29) was a document drawn up by Innocent III. in 1201, in which he considered the claims of Philip of Swabia, of Otto of Brunswick, and of Frederick II. to the empire, and finally decided to support Otto.

[2] Reg. d. N. 29, col. 1025. "Interest apostolicæ sedis diligenter et prudenter de imperii Romani provisione tractare, cum imperium noscatur ad eam principaliter et finaliter pertinere: principaliter, cum per ipsam et propter ipsam de Græcia sit translatum, per ipsam translationis actricem, propter ipsam melius defendendam; finaliter, quoniam imperator a summo pontifice finalem sive ultimam manus impositionem promotionis proprie accipit, dum ab eo benedicitur, coronatur, et de imperio investitur. Quod Henricus optime recognoscens, a bonæ memoriæ Cœlestine papa prædecessore nostro, post susceptam ab eo coronam, cum aliquantulum abscessisset, rediens tandem ad se, ab ipso de imperio per pallam auream petiit investiri."

The correct interpretation of the passage has been hotly disputed between Haller (*vide* especially vol. xx. of the 'Historische Viertel Jahrschrift,' p. 23 f.) and Tangl ('Sitzungs berichte der Preussischen Academie,' 1919, No. 53). We have adopted in the text Tangl's interpretation. Whichever is correct, the important point for our purposes is that Innocent seems to treat the empire as rightfully a fief, and it is unnecessary for us to discuss Haller's interpretation of Henry's conduct.

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[1] By the end of the twelfth century the right to crown the king was recognised as belonging to him, and the commencement of the king's reign was generally dated from the time of the coronation. The importance of the part played by the archbishop would obviously have greatly decreased had the kingdom become hereditary, even if it had been retained.

[2] The principal source is the Ann. Marbacenses, p. 68, in Bloch's edition. "Anno domini mcxcvi. Imperator habuit curiam Herbipolis circa mediam quadragesimam, . . . Ad eandem curiam imperator novum et inauditum decretum Romano regno voluit cum principibus confirmare, ut in Romanum regnum, sicut in Francie vel ceteris regnis, iure hereditario reges sibi succederent; in quo principes qui aderant, assensum ei prebuerunt, et sigillis suis confirmaverunt . . . Interim, missis legatis suis, imperator cepit cum apostolico de concordia agere volens quod filium suum baptizaret—nondum enim baptizatus erat—et quod in regem ungeret. . . . cum res, ut imperator voluit, effectum habere non potuit, iter cum magna indignatione versus Sicilian movit. Interea in Theutonicis partibus, mediantibus Cuonrado Maguntino archiepiscopo et duce Suevie Philippo, omnes fere principes prestito iuramento filium imperatoris in regem eligerunt." Innocent refers to this attempt in a letter to the German princes (Reg. d. N. 33, col. 1039 D, March 1901) announcing that he had decided to recognise Otto as king, and had rejected Philip. Among other reasons he urged was "Quod pater et frater ejus (*i.e.*, Frederick I. and Henry VI., the father and brother respectively of Philip of Swabia) vobis imposuerint grave jugum, vos ipsi perhibete testimonium veritati. Nam ut cætera taceamus, hoc solum quod vobis in substitutione imperatoris eligendi voluerint adimere facultatem, libertati et honori vestro non modicum derogarant. Unde si, sicut olim patri filius (*i.e.*, Henry VI. to Frederick I.), sic nunc immediate succederet frater fratri (*i.e.*, Philip to Henry VI.), videretur imperium non ex electione conferri, sed ex successione deberi." From the Ann. Colon. (M. G., SS. xvii. p. 804) it appears that the Archbishop of Cologne finally also accepted the election of Frederick. It is not quite certain whether Frederick was elected "in regem" or "in imperatorem" (Reg. d. N. 29, col. 1026 A). The latter title would be contrary to all precedent, but Innocent speaks of the election as "in imperatorem," and he was precise in his use of titles, and very unlikely to have been misinformed. It must also be remembered that the princes who elected Philip in 1298 as Henry's successor, elected him "in imperatorem."

See on the whole subject Haller in 'Mittheilungen des Instituts fur Österreichische Geschichtsforschung,' vol. xxxv., 1914, p. 597 f. and 629 f.

Henry's death put an end to the attempt to make the empire hereditary. It was unquestionably a revolutionary scheme, as elections had not in Germany become a merely formal matter.

Henry left at his death a widow, Constance, Queen of Sicily in her own right, and a son not four years old, the future Emperor Frederick II. The curia was evidently on the watch for an opportunity to press its territorial claims. The Bishop of Fermo, after Henry's death, took measures in the March of Ancona to secure the cities and castles to the Church of Rome. Cœlestine wrote approving what he had done, and directed him to extend his action to the whole of the March and Rimini, which he claimed as belonging to the papal "patrimony."[1] Legates were also sent at once to Tuscany to stir up the cities in Imperial Tuscany against the empire, and with the assent of the legates a Tuscan league was formed for mutual defence and common action in dealing with emperors, kings, and other potentates. Help was also to be given the Pope to recover or to defend his territories, excepting in cases where the lands in dispute were claimed by members of the league. The members of the league also undertook not to acknowledge any one as emperor or king except with the consent of the Church.[2]

Whether Haller's solution is correct or not, there can be no doubt that Henry did attempt to make the succession hereditary.

[1] Böehmer, 'Acta Imperii Selecta,' 905. Pope Cœlestine III. to the Bishop of Fermo, 1197. "volentes, ut quod per vos inceptum est, optatum finem nostro studio sortiatur, discretioni vestre per apostolica scripta mandamus, quatenus cum dilecto filio magistro R . . . ab universis civitatibus et castellis Marchie et Ariminensibus etiam fidelitatis vobis faciatis nomine ecclesie Romane iuramenta prestari, ut . . . tota Marchia ad patrimonium nostrum ad (quod) de iure pertinet revocetur."

[2] Santini (P.) Documenti dell antica constitutione del commune de Firenze

Cœlestine died on the 8th January 1198, and Innocent III. was immediately elected to succeed him.[1] In his view, as we have seen, matters were best regulated where the Church was not only in spiritual but also in temporal control.[2] In his efforts to recover or to seize the lands he claimed in Italy, Innocent did not hesitate to appeal to Italian dislike of Germans.[3] Immediately after his election he sent legates to compel Markwald of Anweiler to give up the March of Ancona and the Romagna. He also forced Conrad of Urslingen to give up the duchy of Spoleto and other territories held by him. In the case of Imperial Tuscany he was very indignant with the legates because the league had not acknowledged the supremacy of the Pope.[4] Ficker has shown in his 'Forschungen zur Reichs und Rechtsgeschichte Italiens' how

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XXI., 11th November 1197. Lega tra le citta e signori di Toscana. With regard to the emperor and other authorities, it provides, "Et non recipiemus aliquem imperatorem vel pro imperatore vel rege seu principe duce vel marchione seu nuncium vel alium quemlibet, qui pro eis vel aliquo eorum debeat dominari vel administrare sine assensu et speciali mandato Romane ecclesie."

[1] Gesta VII. and Reg. I. 1.

[2] *Vide* p. 158, note 5 above.

[3] Reg. I. 413. A letter to the clergy of Sicily, November 1198. "Persecutionis olim olla succensa, dum flantis rabies aquilonis Calabros montes novo dejiceret terræ motu, et per plana jacentis Apuliæ pulverem in transeuntium et habitantium oculos suo turbine suscitaret, dum etiam Tauromitana Charybdis sanguinem, quem tempore pacato sitiverat, evomeret cædibus satiata, usque adeo fuit iter maris et terræ præclusum, ut interjacentis impetus tempostatis mutuum matris ad filios et filiorum ad matrem impediret affectum et naturalis affectum interciperet charitatis."

See also Reg. I. 356, probably July 1198. To the Podesta and others in Spoleto.

Reg. II. 4, 17th March 1199. To the consuls and people of Yesi.

Reg. I. 558, col. 514 A, January 1199. To the clergy, &c., of Capua. He exhorts them to resist the enemies of the church "persecutoribus regni (*i.e.*, of Sicily), qui vos, sicut hactenus, servituti supponere moliuntur, bona diripere, mutilare personas et coram viris uxores et patribus filias et fratribus dehonestare sorore," and whom the people of the kingdom could easily have resisted "nisi homines regni mens effeminet muliebris."

[4] Reg. I. 15. To his legate regarding the Tuscan league, February 1198. "non modica sumus admiratione commoti; cum forma colligationis hujusmodi (*i.e.*, the Tuscan league) in plerisque capitibus nec utilitatem contineat, nec sapiat honestatem. Imo cum ducatus Tusciæ ad jus et dominium Ecclesiæ Rom. pertineat, sicut in privilegiis Ecclesiæ Rom. oculata fide perspeximus contineri, nullam inter se sub nomine societatis colligationem facere debuissent, nisi salvo per omnia jure pariter et auctoritate sacrosanctæ Rom. sedis."

largely Innocent revived old claims long in abeyance[1] It is not necessary for our purposes to discuss these claims, nor to inquire how far Innocent succeeded. It is enough to point out that by these claims, more or less successfully asserted (in the case of Imperial Tuscany we hear no more of them from Innocent after 1198), he was the founder of the enlarged papal states stretching from sea to sea, which survived, with comparatively few alterations, to 1861.[2] While the papal patrimony, properly so called, had grown up round Rome many centuries before Innocent's time, all claims to lands outside this territory seem to have been based by him on old imperial grants, or on Mathilda's bequest.[3] We have dealt with Innocent's reference to Constantine's donation, which he treated as conveying to the Pope the whole of the western empire, but he never refers to it in any specific case in which papal claims on the empire are involved.[4]

In Sicily, Constance sent for Frederick after the death of

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[1] Ficker, 'Forschungen z. Reichs u. Rechtsgesch. Italiens,' vol. ii. par. 328 f.

[2] It was in 1861 that the papal states were reduced to the old patrimony of Peter, and in 1870 that they were entirely absorbed in the kingdom of Italy. A convenient summary of the history of the papal states will be found in the Catholic Encyclopedia.

[3] M. G. H., Const. II. 23, oath of Otto at Neuss, 8th June 1201. The lands Otto is to give up to the Roman church, or to help it to recover, are "tota terra que est a Radicofano usque Ceperanum, exarchatus Rauenne, Pentapolis, Marchia, ducatus Spoletanus, terra comitisse Matildis, comitatus Brittenorii cum aliis adiacentibus terris expressis in multis privilegiis imperatorum a tempore Lodouici."

Similarly in his engagement at Speyer, Reg. d. N. 189, 22nd April 1209, where it is lands as stated "in multis privilegiis imperatorum et regum a tempore Ludovici, ut eas habeat Romana Ecclasia in perpetuum, cum omni jurisdictione, districtu, et honore suo."

A similar form is used in the first and second of the "privilegia" drawn up in connection with the Eger promise given by Frederick on the 12th July 1213 and 6th October 1214. M. G. H., Const. II. 46-7.

In the third privilege it is different, as here the formal consent of the princes is embodied, and a fresh grant made to prevent any future disputes, l.c. 48 (p. 61, l. 3 f.). "Omnia igitur supradicta et quecumque alia pertinent ad Romanam ecclesiam de voluntate et conscientia, consilio et consensu principum imperii libere illi dimittimus, renuntiamus et restituimus, necnon ad omnem scrupulum removendum, prout melius valet et efficasius intelligi, concedimus, conferimus et donamus, ut sublata omnis contentionis et dissensionis materia, firma pax et plena concordia in perpetuum inter ecclesiam et imperium perseverent."

[4] *Vide* previous chapter, pp. 182-3.

Henry VI., and had him crowned on the 17th May 1198 as King of Sicily. Before this she had, as far as it was in her power, driven the Germans out of the kingdom. Up to the time of the coronation Frederick is "Rex Romanorum et Rex Siciliæ." After it he is only "Rex Siciliæ."[1] Constance died on the 27th November 1198. A settlement was effected with the Pope very shortly before her death, too late, indeed, for her to receive the official letters from the curia. By this settlement the kingdom of Sicily and the countries attached to it were given as a fief to her and to her heirs. Constance had to submit to the loss of many of the ecclesiastical privileges enjoyed by her predecessors, though curtailed to some extent in Tancred's time.[2] Shortly before her death she

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[1] H. B., vol. i. In a letter written in January 1198 (p. 5) Frederick is styled King of the Romans and of Sicily. In June 1198 (p. 11) the King of the Romans has dropped out, and he is King of Sicily, Duke of Apulia, and Prince of Capua, and these continue to be his titles.

[2] M. G. H., Const. I. 417, Privilegium Tancredi, June 1192.

Reg. I. 410. Letter from Innocent to Constance, Empress and Queen of Sicily, and to Frederick, King of Sicily, written shortly before the death of Constance on the 27th November 1198.

In view of the devotion to the church, of Roger the father, William the brother, and William the nephew, of Constance "Hac igitur consideratione diligenter inducti ac credentes quod prædictorum regum vestigia vestra regia serenitas in devotione ac obsequiis Ecclesiæ imitetur, vobis et hæredibus vestris, qui sicut dictus rex W. quondam frater tuus felicis memoriæ Adriano papæ prædecessori nostro exhibuit, nobis et successoribus nostris et Ecclesiæ Rom. fidelitatem et hominium exhibere ac quæ subscribuntur voluerint observare, concedimus regnum Siciliæ, . . . et reliqua tenimenta quæ tenetis a prædecessoribus vestris hominibus sacrosanctæ Rom. Ecclesiæ jure detenta et contra omnes homines adjuvabimus honorifice manutenere. . . . censum vero . . . vos ac hæredes vestros statuistis Ecclesiæ Rom. annis singulis soluturos . . . Electiones autem secundum Deum per totum regnum canonice fiant, de talibus quidem personis quibus vos ac hæredes vestri requisitum a vobis præbere debeatis assensum."

In the following letter, written no doubt at the same time, to Constance and Frederick (Reg. I. 411), Innocent lays down the rules to be observed as to elections, which provide that the royal assent is required. "Sede vacante, capitulum significabit vobis et vestris hæredibus obitum decessoris. Deinde convenientes in unum, invocata Spiritus sancti gratia, secundum Deum eligent canonice personam idoneam, cui requisitum a vobis præbere debeatis assensum et electionem factam non different publicare. Electionem vero factam et publicatam denuntiabunt vobis et vestrum requirent assensum. Sed antequam assensus regius requiratur, non inthronizetur electus nec decantetur laudis solemnitas quæ inthronizationi videtur annexa, nec antequam auctoritate pontificali bequeathed the guardianship of Frederick to the Pope, who not only accepted but claimed it as his by right.[1]

A number of German princes had started for Palestine shortly before Henry's death, and on the news reaching them they renewed their homage to Frederick. In Germany, Philip, his uncle, acted as his guardian and styled him king in official documents.[2] Some of the German princes, led by Adolf of Cologne, would not honour their bond, and in consequence even supporters of the Hohenstauffen finally gave up the attempt to support Frederick's cause. Eventually Philip consented to stand as candidate, and was elected at Mülhausen on the 8th March 1198 to be emperor (in imperatorem imperii).[3] The opposition, after some difficulty in getting a candidate, finally adopted Otto, and elected him on the 9th June 1198 to be king (in regem). Otto was a son of Henry the Lion, who in his later years became the bitterest enemy of the Hohenstauffen, and was a favourite nephew of Richard I. of England, by whom he had been made Count of Poitou. The German princes who elected Otto had him crowned at Aix on the 12th of July by the Archbishop of Cologne, and thus Otto, though elected by a very small minority of the

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fuerit confirmatus, administrationi se ullatenus immiscebit. Sic enim honori vestro volumus condescendere, ut libertatem canonicam observemus, nullo prorsus obstante rescripto quod a sede apostolica fuerit impetratum."

In a letter (Reg. I. 412) to the archbishops and other ecclesiastics of Sicily, written at the same time, he deals as in 411 with elections. He then goes on, "Volumus etiam nihilominus et mandamus ut de cætero ad Rom. Ecclesiam libere, cum opus fuerit, appelletis et, interpositis ad nos appellationibus curetis humiliter et devote deferre. Nos etiam, quoties necessitas postulaverit, apost. sedis legatos ad vos curabimus destinare . . . quorum obediatis monitis et præceptis."

[1] Reg. IX. 249. To Frederick, King of Sicily, 29th January 1206. "Nec est siquidem sub admiratione ducendum, quod tua nos ita et contristavit detentio, et liberatio jucundavit, cum et præter Balii rationem, quod non tam ex dispositione materna, quam jure regni suscepimus exsequendum." See also Reg. II. 245 to the clergy "milites" and people of Capua, December 1199.

[2] M. G. H., Const. I. 447, 21st January 1198. Agreement of Philip, Duke of Swabia, with the people of Speyer. "In nomine sancte et individue Trinitatis. Philippus divina favente gratia dux Sueuie. . . . Notum ergo fieri volumus tam futuris quam presentibus, quod post decessum H. gloriosissimi imperatoris et fratris nostri Spiram venientes tam ex persona domini nostri regis quam nostra. . . ."

[3] *Vide* p. 200.

princes, was crowned at the right place and by the right person. Philip, on the other hand, delayed his coronation, as, according to his own account given to the Pope a few years later, he was deceived by false promises that his opponents would also give him their votes.[1] Aix having been taken by Otto, Philip had to content himself with Mainz, where he was crowned by the Archbishop of the Tarantaise on the 8th September 1198, the Archbishop of Mainz not having returned from the Holy Land.

Otto and his supporters reported the election and the coronation to Rome. Otto himself did not ask for confirmation, but only that he should be summoned to receive the imperial crown; but the letters of his supporters, contained in the Pope's register of imperial correspondence, all include a request to the Pope to confirm the election. Several declared that Otto was elected by the princes to whom the right of electing the king belonged, thus apparently confining the right to a limited body. Stress was also laid on the fact of the consecration and coronation at Aix by the Archbishop of Cologne.[2]

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[1] Reg. d. N. 136, col. 1134 C, D. Letter of Philip to the Pope, June 1206. "Medio quoque tempore cum maximo et gloriosissimo exercitu ad sedem Aquensem pro recipienda corona ire volentes, astutia et dolis adversariorum nostrorum circumventi, exercitum nostrum remisimus; accepto tamen prius ab eis sacramento quod etiam ipsi in nos vota sua deberent transfundere. Cumque nos ipsi sic decepissent, recepta multa pecunia a rege Angliæ, qua magni viri sæpe corrupti sunt, consanguineum nostrum dominum Oddonem comitem Pictaviæ elegerunt."

[2] The Registrum de Negotio Romani Imperii contains eight letters regarding Otto's election, from Otto and his supporters. No. 3 from Otto; 4 and 5 from Richard I. of England; 6 from the podesta of Milan; 7 from Buldwin, Count of Flanders; 8 from the Count of Dachsburg and Metz; 9 from the Archbishop of Cologne; 10 from eight of the electors, including the Archbishop of Cologne (the letter quoted below from the Mon. Germ.). Only one is dated—namely, Richard's (5), on 15th August 1198. The others were evidently written after the 12th July 1198, in July or August 1198, No. 4 before 19th August. Otto did not ask for confirmation, but that the Pope should summon him to receive the imperial crown (col. 999 D), "Petimus ergo et cum instantia paternitati vestræ supplicamus quatenus . . . nos regiam dignitatem adeptos ad consecrationem vocare dignemini."

M. G. H., Const. II. 19 (Reg. d. N. 10), after 12th July 1198. Letter of Otto's supporters to the Pope announcing his election. "Invocata itaque sancti Spiritus gratia, predictum dominum Ottonem, christiane fidei cultorem devotissimum atque sancte Romane

Philip's supporters did not report his election to the Pope till the 29th May 1199. They then informed him that they had elected Philip to be emperor (in imperatorem Romani solii) of the Roman throne. They begged Innocent not to injure the empire (this is evidently aimed at the Pope's action in enforcing papal claims in Italy, just as they would not allow any infringement of the rights of the Church). They also announced that they would shortly come to Rome with Philip, their lord, that he might receive the imperial crown.

The letter was sent in the name of twenty-six of the German princes and magnates who claimed also the assent of twenty-

ecclesie advocatum et defensorem fidelissimum et iudiciarie potestatis observatorem iustissimum, de longa et antiqua regum prosapia ex utraque linea spectabiliter editum, ad Romani regni fastigium iuste ac rationabiliter elegimus et sicut debuimus ipsius electioni consensimus ipsum que in augustorum sede a Karolo Magno apud Aquisgranum huic dignitati deputata locavimus et corona et regni diademate per manum domini Adolfi Coloniensis archiepiscopi ea qua decuit sollempnitate feliceter decoravimus. . . . Paternitati ergo vestre dignum supplicare duximus, quatinus fidem et devotionem domini nostri regis attendentes, merita quoque illustrissimi patris sui H. ducis Saxonie, qui ab obsequio sacrosancte Romane ecclesie nunquam recessit, memoriter tenentes, paci et quieti vestre et nostre intuitu Dei ac nostri obsequii providentes, ipsius electionem et consecrationem auctoritate vestra confirmare et imperiali coronationi annuere paterna pietate dignemini."

In No. 4 Reg. d. N., Richard asked the Pope to give Otto the imperial crown. In No. 5 he asked Innocent to give his consent to Otto's election, "favore velitis apostolico consentire et regnum sibi Alemanniæ auctoritatis vestræ munimine confirmare, electionem ipsius et coronationem approbantes." In 6 the podesta of Milan refers to the deputation of Germans about to be sent, "pro ejusdem (*i.e.*, Otto's) consecratione et coronatione ac electione confirmanda." In 7 Baldwin, Count of Flanders, begged the Pope to confirm the election. So does the Count of Dachsburg in 8, and Adolphus, the Archbishop of Cologne, in 9. Richard (5) speaks of Otto as having been elected by those "quorum interest regem eligere." So, too, Otto (3) speaks of his election "ab optimatibus et principibus imperii, ad quos de jure spectat electio." The podesta of Milan (6) speaks of the election having been held by those "ad quos electio pertinet." Similarly Baldwin (7). It is important, as showing a distinct stage in the development of the electoral college, that whether universally accepted or not, the election of the German king was held, by some at all events, not to be the concern of all the princes.

Besides the reference in the joint letter of the German princes to the coronation having taken place at the appointed town and by the Archbishop of Cologne, reference is made to these points in the other letters from Otto and the princes.

four others,[1] while only thirteen persons are named as Otto's supporters, and these include the King of England and the Count of Flanders. Moreover, while Philip's supporters came from all over Germany, Otto's were confined to the north-west and to Lorraine.

It would appear from the letter of Philip's supporters that the great majority of the German princes held that confirmation by the Pope was unnecessary, and that it was for the Pope to crown as emperor one duly elected by themselves. The declaration by Philip's supporters that they had elected him to be emperor is novel, though it is akin to the title of "emperor elect" given Henry VI. by Gregory. The object of using this title would appear to have been to make it clear that the king elected by the Germans was thereby *ipso facto* entitled to exercise imperial powers.[2]

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[1] M. G. H., Const. II. 3. Letter of the German princes, supporters of Philip, to the Pope, 28th May 1199. "magnitudini vestre duximus declarandum, quod mortuo inclito domino nostro H(einrico) Romanorum imperatore Augusto, collecta multitudine principum, ubi nobilium et ministerialium imperii numerus aderat copiosus, illustrem dominum nostrum Ph(ilippum) in imperatorem Romani solii rite et solempniter elegimus, . . . Verum quoniam propter paucos principes iustitie resistentes ad negotia imperii utiliter pertractanda ad hec usque tempora non convenimus, nunc deliberatione habita cum predicto domino nostro rege Ph(ilippo) apud Nürenberc solempnem curiam celebravimus, unanimiter ita domino nostro, disponente Altissimo, contra turbatores suos adiutorium prestituri quod nullus in imperio et in terris, quas serenissimus frater suus habuit, ipsius audebit dominium recusare. Quocirca dignitatis apostolice clementiam omni studio et attentione rogamus, ut precum nostrarum interventu, qui Romane Ecclesie statum optimum semper dileximus, ad jura imperii manum cum iniuria nullatenus extendatis, diligentius attendentes, quod non sustinemus ius ecclesiae ab aliquo diminui aut infringi. . . . Monemus insuper et precamur, ut dilecto amico nostro . . . M(arcwardo) . . . procuratori regni Sicilie . . . in negociis domini nostri apostolicam prestetis benivolentiam et favorem . . . certissime scientes, quod omnibus viribus quibus possumus Romam in brevi cum ipso domino nostro divinitate propicia, veniemus pro imperatorie coronationis dignitate ipsi sublimiter obtinenda." The letter issued in the name of three archbishops, nine bishops (including one "electus"), four abbots, the King of Bohemia, five dukes, and four marquises. The princes whose assent is claimed include a patriarch, an archbishop, fourteen bishops, the Palatine Count of Burgundy, and two other counts Palatine, three dukes, and two marquises. (See Reg. d. N. 14.)

[2] In the 'Sachsenspiegel' in its original form, about 1230, the passage regarding the election of the king and his coronation at Aachen and consecration by the Pope, it is stated (*vide* Zeumer, 'Quellen Sammlung. Zur Geschichte

On the other hand, Otto's supporters, not, as already observed, Otto himself, asked for papal confirmation of his election. Stress was laid by them on three points: (A) that Otto was elected by those princes to whom the election belonged as of right; (B) that the coronation and consecration took place as laid down by Charlemagne at Aix; (C) that Otto was crowned and consecrated by the right person. The first point is of importance as indicating that the idea was growing that only a limited number of the German princes were qualified to be "electors." Probably the second and third points carried some weight with both parties, for in 1205, when Philip had recovered Aix, and the Archbishop of Cologne had changed sides, Philip had himself re-elected and crowned at Aix. It is possible that the second coronation was a condition laid down by the archbishop before joining Philip's party, but even in that case the fact that the archbishop could compel assent would seem to indicate some popular support for his claim.

Innocent's answer to Otto's supporters is dated 19th May 1199. In his reply he did not commit himself, though he ended by expressing the hope that he would be able to honour and benefit Otto.[1] Otto evidently read a good deal into this

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der Deutschen Reichsverfassung, &c.,' vol. ii. Extract from Eike von Repgow's 'Sachsenspiegel,' p. 72, 143, about 1230): "Die Dudischen sullen durch recht den küning kiesen. Swen die coren wirt von den bischopphen, die dazu gesatzt sin, unde uph den stul zu Aken kumt, so hat her konincligen namen. Swen ine der babis wiet, so hat her keiserlichen namen."

In the other, later texts, we read, "koninglike walt unde namen" and "des rikes gewalt unde kaiserlichen namen," instead of "konincligen namen" and "kaiserlichen namen." (*Vide* 'Maria Krammer quellen Zur Geschichte der Deutschen Königswahl und des Kurfürstenkollegs,' p. 66, note 6). The change in the later manuscripts would seem to indicate that the meaning of the original version was that it was only the name and not the power that was conferred by the ceremonies referred to.

[1] Reg. d. N. 11, 20th May 1199. To the Archbishop of Cologne. "Gratum gerimus et acceptum quod tu et alii multi principes Alemanniæ dilectos filios G. . . . ad sedem apostolicam destinatis, per eos et litteras vestras et electionis modum et coronationis processum. . . . Ottonis, quem elegistis in regem, plenius intimantes, ac petentes ut, quod a vobis factum fuerat ratum habentes et firmum, auctoritate vellemus apostolica confirmare, ac ipsum Ottonem ad suscipiendam coronam imperii vocaremus. . . . Id autem per hæc apostolica scripta tam tibi quam ipsis duximus responden-

letter, for shortly after the return of his envoys from Rome, he asked the Pope to bring to a happy conclusion what had been so well begun by the help of God and of the Pope. He also wrote that now his uncle Richard was dead, he looked on Innocent as being, after God, his special comfort and support.[1]

In Innocent's answer to Philip's supporters he gave his view of the part to be played by the Pope in imperial elections, and cannot have left much doubt of his opposition to Philip. He told them he knew who deserved his favour. It was untrue that he was seeking to injure the empire; on the contrary, he wished it well. Some emperors had done harm to the Church, but others had been of much service to it. While he desired to recover and to maintain the rights of the Church, he did not wish in doing so to encroach on the rights of others. It was for the Pope to grant the imperial crown to a person elected with the proper formalities as future emperor (eo rite prius electo in principem), and then duly crowned as king (in regem legitime coronato). As successor of Peter in the apostolic office, he would seek to glorify the divine name, honour the Apostolic See, and enhance the greatness of the empire.[2] In a letter to the ecclesiastical

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dum, quod ad honorem et profectum ipsius (*i.e.*, of Otto) libenter et efficaciter, quantum cum Deo poterimus, intendemus, sperantes quod ipse, sicut catholicus princeps, in devotione quam progenitores ipsius circa Romanam Ecclesiam habuerunt non solum persistere sed proficere cum honoris augmento curabit."

[1] Reg. d. N. 19, summer of 1199. Letter of Otto to the Pope. "Unde vestræ multum regratiamus sanctitati quod nuntios nostros cum magno gaudio nobis remisistis. Rogamus itaque dominationem vestram ut negotium nostrum, quod per Dei adjutorium et vestrum bene est inchoatum, feliciter consummare dignemini. Testis enim nobis sit Deus quod post mortem avunculi nostri regis Richardi unicum nobis estis solatium et adjutorium."

[2] Reg. d. N. 15. Innocent to the princes of Germany (Philip's supporters), 1199, end of August or later. "Nos autem, sicut per alias vobis litteras meminimus plenius intimasse, super discordia quæ inter vos peccatis exigentibus est suborta paterna compassione dolemus, cum ex ipsa, nisi Deus averterit, multa prævideamus pericula proventura. Audivimus tamen et merita electorum et studia eligentium, videlicet quis et qualis, a quibus et qualiter sit electus, ubi et a quo etiam coronatus; ut non penitus ignoremus si cui favor sit apostolicus impendendus. Fuerunt autem quidam homines pestilentes, et adhuc multi sunt tales . . . mentientes quod nos ad

and secular princes of Germany, written apparently on the 3rd May 1199, shortly before Philip's supporters addressed him, Innocent had written of the discord between the princes and their presumption in nominating two kings. He had expected them to put an end to this state of things, with its attendant evils, by seeking his help, "to whom it belonged first and last to make provision for vacancies in the empire."[1]

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diminutionem et depressionem imperii nequiter laboremus, cum potius ad promotionem et conservationem ipsius efficaciter intendamus; quia, licet quidam imperatores Ecclesiam vehementer affixerint, alii tamen eam multipliciter honorarent; . . . sic jura nostra et recuperare volumnus et servare ut aliena nec invadere nec impedire velimus. Cum autem imperialis corona sit a Romano pontifice concedenda, eo rite prius electo in principem et prius in regem legitime coronato, talem secundum antiquam et approbatam consuetudinem libenter ad coronam suscipiendam vocabimus."

It is possible that at one time Innocent had intended to put forward even further-reaching claims, for in two letters of the 3rd May 1199, he spoke of the elections as if they were merely nominations. On the 20th May, answering at last the letter of Otto's supporters, he alludes to Otto's election, not nomination. Possibly Innocent had heard between the 3rd and 29th of Richard's death, and thought it necessary to moderate his claims as Otto had lost in Richard a staunch and powerful friend. *Vide* Reg. d. N. 1 and 2, addressed (1) to the Archbishop of Mainz in the Holy Land, and (2) to the German princes. In the second letter he reproves the German princes for their presumption in nominating two kings and failing to have recourse to the Pope. "Exspectantes autem hactenus exspectavimus si forte vos ipsi saniori ducti consilio, tantis malis finem imponere curaretis, videlicet ad nostrum recurreretis auxilium, ut per nos, ad quos ipsum negotium principaliter et finaliter noscitur pertinere, vestro studio mediante, tanta dissensio, sopiretur. Verum quia vos in hac parte negligentes et desides hactemus exstitistis, nos, qui, juxta verbum propheticum, constituti sumus a Deo super gentes et regna, ut evellamus et destruamus, ædificemus etiam et plantemus, officii nostri debitum exsequi cupientes, universitatem vestram monemus attentius et exhortamur in Domino, per apostolica scripta mandates, . . . ad provisionem ipsius melius intendatis; . . . Alioquin, quia mora de cætero trahit ad se grave periculum, nos quod expedire noverimus procurantes, ei curabimus favorem apostolicum impertiri quem credemus majoribus studiis et meritis adjuvari." In the above passage "nos, ad quos ipsum negotium, principaliter et finaliter noscitur pertinere," *ipsum negotium* evidently means the filling up of the vacancy in the empire. That this is the meaning seems sufficiently clear from the passage itself, but see also 29 (col. 1025 A), where Innocent wrote, "Interest apostolicæ sedis diligenter et prudenter de imperii Romani provisione tractare, cum imperium noscatur ad eam principaliter et finaliter pertinere." See also 30 (col. 1031 D), where Innocent speaks of the "imperii Romani provisio," 31 (col. 1034 C), where he speaks of the "negotium imperii," and 33, where "the provisio imperii" clearly refers to filling up the vacancy.

[1] Reg. d. N. 2.

Philip's supporters appear to have taken no notice of these letters, and the next important step was taken by the Pope in 1200. Conrad, the Archbishop of Mainz, had returned from Palestine in 1199, and had visited the Pope on his way to Germany. Innocent had failed to get Conrad's support to his policy, but he had got a promise from him that he would not take any final steps regarding the disputed election till he had consulted him (per litteras et nuntios tuos nostræ consuleres beneplacitum). Conrad on his return to Germany did not join either party, but endeavoured to get them to agree to refer the dispute to a body of sixteen princes, eight from each party. He was to preside, and all the princes were to accept the decision of the majority. Otto accepted, but wrote the Pope, asking him to get the arbitrators to support him. The Pope was, if necessary, to threaten them.[1] Innocent on hearing, apparently from Otto, of what was going on, wrote a very indignant letter to the archbishop for not fulfilling his promise before any final step, such as now proposed, was taken. He informed the archbishop that he was sending a trustworthy envoy with letters, to let him and the other princes know what he wished and advised (intentionis nostræ beneplacitum et salubre concilium).[2] In his letter to the German princes, Innocent informed them that he had often discussed with the cardinals and with others what he could do to put an end to the quarrel. Many had suggested that, as two rival kings had been elected, the Pope should inquire into the aims of the electors and the merits of the persons elected, to enable him to decide whom he should favour. He then set out the arguments on each side. On behalf of Philip it was urged that he had more numerous supporters, and was in possession of the imperial insignia. On the other hand, he had not been crowned in the right place nor by the right person; he had seized the kingdom without consulting the Pope, notwithstanding his oath of allegiance to Frederick; he had been excommunicated by Cœlestine, and his absolution given after he had been named king was irregular. He was not only under sentence of excommunication at the time of his election, the sentence was still in force, and the oath of allegiance was not binding. Another objection was the danger of establishing the principle of succession by inheritance should Philip succeed his brother. As he did not wish to appear vindictive, he would not repeat the charges brought against Philip's family as oppressors of the Church and of the princes. It was urged on Otto's behalf that he had been crowned at the right place and by the right person. Innocent exhorted the princes to take whatever action might be necessary to put an end to the dispute, as he did not wish to do anything derogatory to their dignity. He had warned them of the danger of delay, and announced that if they did not act themselves, he would give the apostolic favour to the most suitable candidate, suitable by his own merits, and marked out for selection by the aims of those supporting him (quem crederemus majoribus studiis et meritis adjuvari). The Pope was rejoiced to hear that at last they intended to take action to secure the peace of the empire, as he had exhorted them to do. He insisted on the necessity of their selecting one fit for rule, as such an one was needed not only by the empire, but also by the Church, which could no longer dispense with a defender. He must be one whom the Church could crown, otherwise the trouble would only be aggravated, as the city (*i.e.*, Rome) and the Church would be displeased, and it would be necessary to maintain the cause of justice and truth. This warning was not given them because the Pope had any desire to interfere with their privileges, but in order to prevent the dissensions and scandals that must otherwise arise.[1]

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[1] Reg. d. N. 20. Otto to the Pope.

[2] Reg. d. N. 22. To the Archbishop of Mainz. The meeting was to be held on the 28th July, so Innocent's letter was probably sent off some time in June.

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[1] Reg. d. N. 21. To all the ecclesiastical and secular princes of Germany. Probably June 1200. "Cum de discordia quæ diebus nostris peccatis exigentibus super imperio est suborta vehementius doleamus, quia non, ut aliqui mentiendo confingunt, ad depressionem ejus intendimus, sed ad exaltetionem potius aspiramus, cogitavimus sæpius intra nos ipsos, deliberavimus quoque frequenter cum fratribus nostris, et cum aliis viris prudentibus et discretis non semel tantum tractavimus qualiter ad sopiendam dissensionem hujusmodi possemus impendere operam efficacem. Fuerunt

There could no longer be any doubt that Innocent was opposed to Philip, and now that he had declared himself, he wrote letters to back up Otto. Thus he let the Duke of

autem quamplures qui nobis suggererent ut cum duo fuissent per discordiam in reges electi, de studiis eligentium et meritis electorum inquireremus sollicite veritatem, quatenus intelligeremus plenius cui esset favor apostolicus impendendus. Dicebatur enim de altero quod receptus esset a pluribus et insignia imperialia obtineret. Sed opponebatur protinus contra eum quod nec ab eo qui potuit, nec ubi debuit, fuerit coronatus. . . . Præterea objiciebatur eidem quod contra proprium juramentum, super quo nec consilium a sede apostolica requisierat, regnum sibi præsumpserat usurpare, cum super illo juramento sedes apostolica prius consuli debuisset, sicut et eam quidam consuluere prudenter, apud quam ex institutione divina plenitudo residet potestatis." Some also added that he was excommunicated when he was elected, as he had been excommunicated by Cœlestine, and that he was still under excommunication, as the conditions laid down for his release had not been observed. "Unde, juxta sanctorum Patrum canonicas sanctiones ei qui talis existit non obstante juramento fidelitatis est obsequium subtrahendum. Hoc quoque contra eumdem non modicum facere proponebant quod contra libertatem imperii regnum sibi jure nitebatur hæreditario usurpare. Unde si, prout olim frater patri successerat, sic nunc succecederet frater fratri, libertas principum deperiret, cum non per eorum electionem, sed per successionem potius, regnum videretur adeptus; ut cætera benignius taceamus quæ contra genus ipsius super oppressione tam Ecclesiarum quam principum opponuntur, ne ipsum persequi videamur. Cæterum proponebatur pro altero quod ab eo qui potuit et ubi debuit fuerat coronatus, cum a venerabili fratre nostro Coloniensi archiepiscopo, ad quem id pertinet, apud Aquisgranum in solio augustali fuerit inunctus et coronatus in regem. Sed opponebatur eidem quod pauciores eum principes sequerentur. Licet autem nobis fuissent talia sæpe suggesta, et ut sic procederemus consultum a viris prudentibus et discretis, volentes tamen honori vestro deferre, universitatem vestram paterno commonuimus delectionis affectu et per apostolica vobis scripta mandavimus ut Dei timorem habentes præ oculis, et honorem zelantes imperii, ne annularetur dignitas ejus et libertas etiam deperiret, melius intenderetis ad provisionem ipsius, . . . alioquin, quia mora periculum ad se grave habebat nos quod expedire sciremus sollicite procurantes, ei curaremus favorem apostolicam impertiri quem crederemus majoribus studiis et meritis adjuvari. Gaudemus autem quod licet monita nostra distuleritis hactenus exaudire, nunc tamen redeuntes ad cor et quid potius expediat attendentes, juxta commonitionem nostram proposuistis, ut accepimus, de imperii pace tractare. Monemus igitur universitatem vestram et exhortamur in Domino, . . . quatenus iis quæ præmisimus diligenti meditatione pensatis, ad eum vestræ dirigatis considerationis intuitum qui merito strenuitatis et probitatis ad regendum imperium est idoneus. . . . Ecclesia nec possit nec velit diutius justo et provido defensore carere, quem nos possimus et debeamus merito coronare; ab eo penitus animum removentes cui propter impedimenta patentia favorem non debeamus apostolicum impertiri alioquin, unde crederetis discordiam vos sopire, inde contingeret vos majus scandalum suscitare; quoniam præter id quod si

Brabant know he would remove any obstacles on the ground of affinity to the marriage of his daughter to Otto.[1] He promised the princes to support any agreements affecting their possessions, dignities, and honours, if made with one approved by him as their ruler.[2] He authorised his legates to release Philip of France and John from any illicit obligations (*i.e.*, that would prevent them from assisting Otto).[3] The Archbishop of Trier had not fulfilled his promise to the Archbishop of Cologne to support whoever the latter chose as king. This promise had been paid for, and the Pope directed him either to carry out his promise or to repay the money received. Moreover, he was to present himself to the Pope to answer for the breach of his oath.[4] He issued conditional orders to excommunicate the Landgraf of Thuringia for similar reasons.[5] He also pressed John to pay the money due to Otto under Richard's will. Should John fail to do so, the Pope would, as bound by his office, see justice done.[6]

Innocent's promises and threats proved of no avail. He could not induce the princes to leave the settlement of the dispute to him, or to arrive at a settlement by sacrificing Philip to the Pope. Towards the close of 1200 Innocent

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fieret forte contrarium, urbi et pene penitus toti displiceret Italiæ, Ecclesia quoque id ferret graviter et moleste, nec se dubitaret pro justitia et veritate potenter opponere, quæ Deo desidera potius quam hominibus complacere. . . .

Hæc autem vobis prædicimus, non ut libertatis, dignitatis et potestatis vestræ privilegio derogare velimus, sed ut dissensionis et scandali materiam amputemus, cum is sit a vobis assumendus in regem quem nos in imperatorem possimus et debeamus merito coronare, ne, si secus accideret, fieret error novissimus pejor priore. . . . Super juramentis etiam illud auctoritate apostolica statuemus quod ad purgandam et famam et conscientiam redundabit. Unde non permittatis vos aliquo modo seduci sub specie pietatis ab iis qui non communem sed specialem utilitatem inquirunt; quoniam ad hoc principaliter debet principis electio procurari, non ut provideatur certæ personæ, sed ut reipublicæ consulatur; quod utique fieri non potest, nisi persona principis provida sit et justa, strenua et honesta."

[1] Reg. d. N. 23, summer 1200.

[2] Reg. d. N. 24, summer 1200. "præsentibus litteris duximus intimandum quod omnes qui cum eo, qui assumptus in principem, nostram obtinuerit gratiam et favorem, compositionem inierint, super possessionibus, dignitatibus et honoribus, dante Domino, manutenere curabimus et fovere, facientes eam auctoritate apostolica inviolabiliter observari."

[3] Reg. d. N. 25, summer 1200.

[4] Reg. d. N. 26, summer 1200.

[5] Reg. d. N. 27, summer 1200. To the Archbishop of Mainz.

[6] Reg. d. N. 28, summer 1200.

drew up a confidential memorandum (known as the Deliberatio), in which he discussed at length whom he should recognise as king and future emperor. The settlement of this question was first and last for him to decide, and Innocent proceeded to consider the claims not only of Otto and Philip, but also of Frederick. As regards Frederick, his election had been confirmed by the oaths of the princes, given by them voluntarily. On the other hand, these oaths were unlawful (illicita) and the election injudicious, inasmuch as the princes elected a child two years of age, unbaptised, and unfit for any office. The princes were accordingly not bound by their oaths. The election of a person unfit for office could not be cured by the appointment of a "procurator," nor could a temporary emperor be appointed. On the other hand, the Church could not dispense with one. Frederick was the Pope's ward only as King of Sicily, and the Pope was not thereby bound to support his succession to the empire, which would involve the union of the kingdom of Sicily and of the empire. Such a union would be disastrous for the Church, as, besides other dangers, Frederick would, like his father, consider it beneath his dignity as emperor to give the oath of fidelity for Sicily and to do homage. As regards Philip, Innocent maintained that he was still under excommunication, as the absolution by the Bishop of Sutri was invalid. Moreover, he was also under excommunication as the instigator and supporter of Markwald in his misdeeds. It was also right that the Pope should oppose him, lest the empire, which should be the free gift of the electors, cease to be elective and pass by succession. Moreover, the Pope was bound to oppose him, as a persecutor of the Church and a member of a family of persecutors. To act otherwise would be like arming a madman against oneself. Innocent proceeded to enumerate the misdeeds of his ancestors, including Frederick's quarrel with Hadrian over the use of the word "beneficium."

The objection in Otto's case was that he was elected by fewer than Philip. On the other hand, at least as many (tot vel plures) of those who had a special right to elect the emperor had accepted Otto. In dealing with an election, it was necessary to consider the merits of the person elected and his fitness for the post, and the wisdom of the electors was more important than their number. Innocent touched shortly on the superior fitness of Otto to govern the empire, and then proceeded definitely to reject Philip, because of the obvious objections to his appointment, and he decided to resist his usurpation of the empire. His legate was to endeavour to get the princes to agree on a suitable person, or to refer the matter to him. Should the legate fail with the princes, the Pope would decide in favour of Otto and accept him as the king, whom he would hereafter summon to Rome to be crowned as emperor.[1] It will be observed that Innocent deals not only with the merits of the candidates from the point of view of the Church, he also discusses the validity of the several elections from a legal point of view.

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[1] Reg. d. N. 29, col. 1025 f., end of 1200. Innocent's words with regard to the objection that Frederick's appointment would involve the union of Sicily and the empire are (col. 1026 C), "Quod non expediat ipsum imperium obtinere patet ex eo quod per hoc regnum Siciliæ uniretur imperio, et ex ipsa unione confunderetur Ecclesia. Nam, ut cætera pericula taceamus, ipse propter dignitatem imperii nollet Ecclesiæ de regno Siciliæ fidelitatem et hominium exhibere, sicut noluit pater ejus."

Among the grounds for opposing Philip are (col. 1028 B), "Quod ei (*i.e.*, Philip) nos opponere deceat manifeste videtur ex eo quod si, prout olim patri filius, sic nunc immediate succederet frater fratri, videretur imperium ei non ex electione conferri, sed ex successione deberi, et sic efficeretur hæreditarium quod debet esse gratuitum, præsertim cum non solum Fredericus substituerit sibi filium, sed Henricus etiam filium sibi voluerit subrogare; et per hoc forsan in posterum abusio traheretur in usum."

With regard to Otto's election, he writes (col. 1030 D), "De Ottone videtur quod non liceat ipsi favere, quoniam a paucioribus est electus; . . . Verum, cum tot vel plures ex his ad quos principaliter spectat imperatoris electio in eum consensisse noscantur quot in alterum consenserunt, cum non minus idoneitas seu dignitas electæ personæ, imo plus quam eligentium numerus sit in talibus attendendus, nec tantum pluralitas quoad numerum, sed salubritas quoad consilium in eligentibus requiratur, et Otto magis sit idoneus ad regendum imperium quam Philippus . . . (col. 1031 B) videtur quod et liceat deceat et expediat ipsi (*i.e.*, to Otto) favorem apostolicam exhibere."

With regard to the action to be taken (col. 1031 B), "De cætero vero agendum per legatum nostrum apud principes ut vel conveniant in personam idoneam, vel se judicio aut arbitrio nostro committant. Quod si neutrum elegerint, cum diu expectaverimus, cum monuerimus eos ad concordiam . . . ne videamur eorum fovere discordiam . . . cum negotium istud dilationem, non capiat, . . . ei (*i.e.*, Otto) manifeste favendum, et ipsum recipiendum in regem et præmissis omnibus quæ . . . debent præmitti, ad coronam imperii evocandum."

That the document was a confidential one appears from the fact that Innocent states in it his instructions to the legate, which would obviously not be for publication.

In accordance with this decision, Innocent wrote two letters on the 1st January 1201, addressed to the Archbishop of Cologne and the German princes generally. In the letter for the German princes, ecclesiastical and secular, he informed them that he was sending his legate to endeavour to get them to agree on some one whom the Pope could accept and crown as emperor, a ruler whose selection would benefit the empire and not prejudice the Church (ad utilitatem imperii cum Ecclesiæ honestate). Should they be unable to agree, the legate was to seek to persuade them to leave the decision to the Pope. This would not prejudice their freedom of choice in election, nor would it affect the dignity of the empire. They could have no better mediator than the Pope, and he could, in virtue of the powers divinely given him, deal with any oaths already given by the princes (*i.e.*, he could release them from their oaths of allegiance). Moreover, the decision of this question belonged first and last to the Pope. First, because it was the Church which transferred the empire from the Greeks in order to secure a protector; last, because the Pope bestowed the imperial crown.[1]

For some reason unknown to us, Innocent changed his plans and decided to recognise Otto as king, without further reference to the German princes.[1] In a letter to Otto, dated the 1st March 1201, but evidently not delivered till the legate arrived in July at Cologne, Innocent wrote of the two great powers, the "Ecclesia" and the "Imperium," and their respective functions. He told him of his great desire to see the vacancy in the empire filled, and he announced, in virtue of the power he had received from God through the blessed Peter, he received him as king, and ordered that in future Otto be given the reverence and obedience due to royalty. The honour so bestowed was the greatest that could be given to any secular ruler. Later, when all the usual preliminaries were completed, he would summon him to Rome to receive the imperial crown. In this letter no reference is made to the electors nor to the election.[2] Innocent wrote a letter bearing the same date to the German princes, announcing the action he had taken and giving his reasons. He stated the right of the papacy to deal with the matter. In mentioning the objections to Philip, he included the "insolentia" shown by him and his Hohenstauffen predecessors to the princes, and the danger of making the succession hereditary.

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[1] Reg. d. N. 31. To all the princes, ecclesiastical and secular, of Germany, 5th January 1201. Innocent informs the princes that he is sending his legate the cardinal bishop of Palestrina, and if he can be spared from France, the cardinal bishop of Ostia, to induce them (col. 1034 B) "per vos ipsos cum eórum, si necesse fuerit, consilio et præsidio ad concordiam efficaciter intendatis, concordantes in eum quem nos ad utilitatem imperii cum Ecclesiæ honestate merito coronare possimus, vel si forte per vos desiderata non posset concordia provenire, nostro vos saltem consilio vel arbitrio committatis, salva in omnibus tam libertate vestra quam imperii dignitate, cum neminem magis quam Romanum pontificem super hoc deceat vos mediatorem habere, qui voluntatibus et rationibus intellectis, quid justum foret et utile provideret, vosque per auctoritatem cœlitus sibi datam super juramentis exhibitis quoad famam et conscientiam liberaret, cum et negotium imperii ad nos principaliter et finaliter pertinere noscatur; principaliter quidem, quia per Romanam Ecclesiam fuit a Græcia pro ipsius specialiter defensione translatum; finaliter autem, quoniam etsi ab alio regni coronam recipiat, a nobis tamen coronam imperii recipit imperator."

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[1] This appears from the legate's account of his proceedings (Reg. d. N. 51). He says nothing of any attempt to get the German princes to come to an agreement. He would certainly have done so had he made an attempt which failed. It is singular, however, that Innocent's letter to the princes, dated 1st March, but evidently not delivered till the legate arrived in Germany, appears to contemplate an endeavour by the legate to get the princes to come to a settlement, or refer the matter to the Pope.

[2] Reg. d. N. 32. Innocent to Otto, Illustri Regi Ottoni in Romanorum Imperatore electo, 1st March 1201. Innocent mentions in this letter the efforts he has made to get the princes to settle the matter, and the consideration he has shown Otto in his letters. The Pope goes on to write of the merits of Otto and of his ancestors (col. 1035 C, D). "In te igitur progenitorum tuorum devotionem suscitare plenius et abundantius remunerare volentes, credimus, et quasi pro certo tenemus, quod non solum in ea te verum ostendes hæredem eorum et legitimum successorem, sed tanto ipsos in hoc præcedes amplius quonto te a nobis magis intelliges honoratum. . . . Nos enim serenitatem tuam in eo de consilio fratrum nostrorum honorare volentes ultra quod in sæculo sæcularis princeps nequeat honorari, auctoritate Dei omnipotentis nobis in beato Petro collata te in regem recipimus, et regalem tibi præcipimus de cætero reverentiam et obedientiam exhiberi; præmissisque omnibus quæ de jure sunt et consuetudine præmittenda, regiam magnificentiam ad suscipiendam Romani imperii coronam vocabimus. . . ."

Otto, on the other hand, was personally deserving; he was descended on both sides from families devoted to the Church, and was crowned after his election at the right place and by the right person. He accordingly received him as king, and directed that regal honours be paid him. He would hereafter, as was right (sicut decet), summon him to Rome to receive the imperial crown.[1] This letter was backed up by a number of letters to individual princes and to the kings of England and France.[1]

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[1] Reg. d. N. 33. Innocent to all the princes, ecclesiastical and secular, in Germany, 1st March 1201. Innocent tells the princes that as they and he alike know (col. 1036 C) "ejus provisio (*i.e.*, of the empire) principaliter et finaliter nos contingit; principaliter quidem, quia per Ecclesiam de Græcia pro ipsius specialiter fuit defensione translatum: finaliter autem, quoniam etsi alibi coronam regni accipiat, a nobis tamen imperator imperii recipit diadema in plenitudinem potastatis." He writes of the great injury caused by the want of an emperor, and how he has long expected the princes either to settle the matter or get his help. They had failed to do the one or the other, and had not answered his letters. After this he heard that Conrad, Archbishop of Mainz, had arranged for a meeting (col. 1037 B) "de provosione imperii tractaturi. Unde, ne videremur ab incœpto desistere, litteras nostras ad vos per proprium nuntium duximus destinandas, consilium nostrum vobis exponentes fideliter, et super iis quæ necessaria videbantur diligentius instruentes." Harmony not having been restored, the Pope finally sent his legate and his notary to endeavour to induce the princes, either by themselves or with their help, to arrive at an agreement, or else refer the matter to the Pope (col. 1037 D) "salva in omnibus tam libertate vestra quam imperii dignitate, cum neminem magis quam Romanum pontificem mediatorem in hoc vos habere deceret, qui voluntibus et rationibus intellectis provideret quod esset justum et utile, vosque per auctoritatem cœlitus sibi datam super juramentis exhibitis quoad famam et conscientiam liberaret, et ad quem negotium imperii ex causis superius assignatis non est dubium pertinere." As nothing has been done by the princes (col. 1038 H) "cum dispendium Ecclesiæ, quæ diutius nec vult mec debet idoneo defensore carere, sustinere nolumus ulterius vel dissimulare jacturam populi Christiani." He proceeds to give his reasons for rejecting Philip, including the objection that should he succeed his brother the kingdom would tend to become hereditary (col. 1040 A). "Nos igitur, quoniam duobus ad habendum simul imperium favere nec possumus nec debemus, nec credimus personæ in imperio, sed imperio in persona potius providendum, quia etiam ad hoc dignior reputatur qui magis idoneus reperitur, ex causis prædictis, non amaritudinis sed rectitudinis zelo . . . personam Philippi, tanquam indignam quoad imperium præsertim hoc tempore obtinendum, penitus reprobamus, et juramenta quæ ratione regni sunt ei præstita decernimus non servanda, non tam propter paternos vel fraternos excessus quam propriam ejus culpam. . . . Cum autem charissimus in Christo filius noster Otto vir sit industrius, providus et discretus, fortis et constans, et per se devotus existat Ecclesiæ, ac descendat ex utraque parte de genere devotorum, cum etiam electus in regem, ubi debuit et a quo debuit

Innocent's legate, the cardinal bishop of Palestrina, informed him of the result of his mission, probably in August 1201.[2] According to him his reception was not at all friendly; among others the Archbishop of Mainz and the Bishops of Speyer and Worms would not receive his messengers. Some of the princes went so far that they actually hung messengers sent out by supporters of the papal party. He added that some of the princes were so angry with the Roman Church that had there been further delay they would have elected some third person. The legate accordingly read out the papal letter to Otto. He also read those to the princes concerning his "reception and approval," and finally, on the authority of the Pope, declared him king (denuntiavimus regem Romanorum et semper Augustum), and excommunicated all who might oppose him.[3]

Innocent's notary, who had accompanied the legate, wrote that Philip of Swabia complained to his supporters that the

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fuerit coronatus, et ipse suæ strenuitatis et probitatis meritis ad regendum et exaltandum imperium idoneus esse nullatenus dubitetur, nos auctoritate beati Petri et nostra eum in regem recepimus, et regalem ei præcepimus honorificentiam exhiberi, ipsumque ad coronam imperii, sicut decet, vocare curabimus et eam ipsi solemniter et honorifici ministerio nostro, Domino concedente, conferre."

[1] Reg. d. N. I. Nos. 34 to 47, 49, 50. Probably all written in March 1201, and delivered by his legate some time before the proclamation of Otto as king. 50 is dated 9th June 1201.

[2] Reg. d. N. 51. Not dated. July or August 1201. The cardinal bishop of Ostia informs the Pope of the result of his legation. He met Otto near (apud) Aix, and then went on with him to Cologne, where the princes previously summoned met them. Many, however, would not come "et hoc eos noluisse deprehendimus, quia ne nostros reciperent nuntios, civitates et domus suas clausisse feruntur, Moguntinus præcipue, Spirensis, et Wormaciensis. Quidam præterea nuntii super eodem negotio a quibusdam principibus directi, suspendio perierunt. Hoc etiam sanctitatem vestram latere non volumus, quod si negotium dilatum fuisset, quorumdam ordo principum sic immutata videbantur quod in odium Romanæ Ecclesiæ tertium procreassent."

[3] Reg. d. N. 51 (col. 1052 C). Letter of Cardinal legate of Palestrina. After 3rd July 1201. "in conspectu omnium qui convenerant litteras vestræ sanctitatis regi et de ipsius receptione et approbatione cunctis exhibuimus, et eum de cætero auctoritate vestra publice denuntiavimus regem Romanorum et semper Augustum, excommunicatis omnibus qui se ei ducerent opponendos."

papal opposition was due to his consenting to be emperor without having received the Pope's permission (quia sine licentia vestra voluerit imperare); if they gave way, their liberty of election would be gone, and no one could henceforth rule without the Pope's consent (nemo præter voluntatem Romani pontificis poterit imperare).[1] The action of the Archbishop of Mainz in refusing to receive the legate's messengers is specially noteworthy, as he was elected in opposition to Philip's candidate. The Pope was evidently disturbed at the view taken in Germany of his action. In a letter to the Archbishop of Cologne, about the end of 1200, he thought it necessary to warn him to pay no attention to the slanders (maledicta) of those who asserted the Pope wanted to deprive the princes of their freedom of election. So far from this being the case, he had taken such action as would secure their freedom. He had not elected any one, but he had favoured, and was still favouring, the person elected by the majority of those who had a right to take part in the election (qui vocem habere . . . noscuntur). The person favoured by him had been crowned by the right person and at the right place, and therefore ought to be crowned emperor by the Pope.[2]

It will be observed what efforts the Pope makes to show that in appointing Otto he had given effect to his election by the majority of those entitled to take part in it, and had maintained the freedom of election against claims based on hereditary rights.

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[1] Reg. d. N. 52 (col. 1054 B). Philip the notary to the Pope. August or September 1201. "Conqueritur autem de vobis idem dux Sueviæ et de Romana Ecclesia coram ipsis, dicens quod ea sola ratione invehimini contra ipsum, quia sine licentia vestra voluerit imperare, eos intelligere faciens quod ex hoc deperit libertas eorum, et nemo præter voluntatem Romani pontificis poterit imperare . . . dominus Prænestinus et ego cum magistro Ægidio in itinere sumus Bingam, quæ civitas est prope Maguntiam, accedendi; ubi credimus Maguntinum . . . ad mandata sacrosanctæ Romanæ Ecclesiæ et ad vestrum et ad domini regis servitum facile per amicos nostros inducere."

[2] Reg. d. N. 55 (col. 1057 A). To the Archbishop of Cologne. November 1201 to February 1202. "Nec te moveant maledicta quorumdam, qui nos asserunt libertatem electionis adimere principibus voluisse, cum libertati eorum detulerimus potius in hoc facto, et illæsam eam duxerimus conservandam. Non enim elegimus nos personam, sed electo ab eorum parte majori, qui vocem habere in imperatoris electione noscuntur, et ubi debuit et a quo debuit coronato, favorem præstitimus et præstamus, cum apostolica sedes illum in imperatorem debeat coronare qui rite fuerit coronatus in regem. In eo quoque stamus pro principum libertate quod ei favorem penitus denegamus qui sibi jure successionis imperium nititur vindicare."

Besides writing the archbishop, Innocent also directed his legate to use the same arguments with other German princes, and to impress on them all that he had by his action preserved the liberty of the princes, which he desired to see maintained.[1]

There was a meeting of Philip's supporters in Bamberg in September 1201, and again at Halle in 1202, at which a large number of German princes, ecclesiastical and secular, decided to protest against the legate's proceedings, as an unprecedented interference with the election of the king. In their letter they affected to believe that the legate's action could not have been taken with the knowledge of the Pope, nor with the consent (conniventia) of the cardinals. The legate had no locus standi, either as elector or as judge (cognitor). In the case of a dispute regarding the election of the king there was no judge who could give a decision; the matter must be left to the electors to settle. Christ had by his conduct and by the separation of his powers (*i.e.*, as priest and king) shown clearly that one fighting for God should not be involved in secular affairs, just as a secular ruler should not deal with spiritual matters. Even granting the legate could act as a judge, his decision was invalid, for he could not lawfully pass sentence, as he had done in this case, in the absence of one of the parties. The princes pointed out how their emperors, so far from pressing unjust claims, had abandoned their right to be consulted before a papal election took place, and they could not believe that the Pope would not seize a privilege (bonum) to which he had never been entitled. They ended their letter by requesting the Pope at a suitable time and place, in accordance with his office (sicut vestri officii est), to anoint Philip.[2] The Pope's reply was the famous bull

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[1] Reg. d. N. I. 56.

[2] M. G. H., Const., II. 6. Letter to Innocent from the German princes supporting Philip. January 1202. "Non ergo sacrosancte Romane sedis sanctitas et cuncta pie fovens paternitas hoc sentire ullo modo nos permittit, ea, que juri dissona et honestati

"Venerabilem." We have dealt with this bull in a previous volume,[1] but only as a part of the canon law, and it appears necessary to discuss it here shortly in its historical setting.

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contraria a domino Prenestino vestre sanctitatis, ut ipse asserit, legato in Romanorum regis electione sunt indecenter nimium perpetrata, ut de vestre mire prudentie prodierint conscientia, nec sanctissimam sancti cetus cardinalium credimus huc conniventiam accessisse. Quis enim huic similem audivit audaciam ? . . . Ubinam legistis, o summi pontifices, ubi audistis, sancti patres, totius ecclesie cardinales, antecessores vestros vel eorum missos Romanorum regum se electionibus immiscuisse sic, ut vel electorum personam gererent vel ut cognitores electionis vires trutinarent ? Respondendi instantiam vos credimus non habere. In Romanorum enim electione pontificum hoc erat imperiali diademati reservatum, ut eam Romanorum imperatoris auctoritate non accomodata ullatenus fieri non liceret. Imperialis vero munificentia, que cultum Dei semper ampliare studuit et eius ecclesiam privilegiorum specialitate decorare curavit, hunc honoris titulum Dei ecclesie reverenter remisit ; . . . Si laicalis simplicitas bonum, quod de iure habuit reverenter contempsit, sanctitas pontificalis ad bonum quod nunquam habuit, quomodo manum ponit ? . . . Vobis ergo suprascriptorum principum cum dolore aperit universitas, quod Prenestinus episcopus in Romanorum regis electione contra omnem iuris ordinem se ingessit, nec videre possumus, cuius personam inculpabiliter gerat. Gerit enim vel personam electoris, vel personam cognitoris. Si electoris, quomodo quesivit opportunitatem, qualiter arbitris absentibus mendacio veritatem et crimine virtutem mutaret ? Quomodo enim ea pars principum, quam numerus ampliat, quam dignitas effert, iniuste nimium est contempta ? Et si cognitoris, hanc gestare non potuit. Romanorum enim regis electio si in se scissa fuerit, non est superior iudex cuius ipsa sententia integranda, sed eligentium voluntate spontanea consuenda. Mediator enim Dei et hominum, homo Christus Iesus, actibus propriis et dignitatibus distinctis officia potestatis utriusque discrevit, ut et Deo militans minime se negotiis implicaret secularibus, ac vicissim non ille rebus divinis presidere videretur qui esset negotiis secularibus implicatus. Sed si vos iudicem confiteamur, factum hoc excusationem habere non potest. Vestrum enim in vos possumus exerere gladium, quia absente alia parte sententia a iudice dicta nullam habeat firmitatem. Quid ergo predicti Prenestini sententia in Ottone firmare potuit, cum nichil ante in eo factum sit ? . . . Vobis enim, pater sanctissime, insinuare decrevimus, quia electionis nostre vota in serenissimum dominum nostrum Ph(ilippum) Romanorum regem . . . una voce, uno concensu contulimus, hoc spondentes, hoc firmiter promittentes, quod a vestra et Romane sedis obedientia non recedet. . . . Unde petimus, ut veniente tempore et loco, sicut vestri officii est, unctionis ipsi beneficium non negetis." Two archbishops, eleven bishops (including one "electus"), three abbots, the King of Bohemia, four dukes, and a number of other princes took part in the protest. (*Vide* copy in Reg. d. N. 61.)

[1] Vol. ii. pp. 217-19. Add from the bull words not quoted in previous volume. M. G. H., Const., II. p. 507, l. 94 f. "Preterea cum multi principum ex imperio eque sint nobiles et potentes, in eorum preiudicium redundaret, si nonnisi de domo ducum Sueuie videretur aliquis ad imperium assumendus."

In his letters before the "Deliberatio," Innocent had not only admitted the right of election by the German princes, he had urged them to come to some agreement and fix on a person whom he could accept, or else to refer the dispute to him for settlement. He had, however, also declared that the question of filling up a vacancy in the empire was first and last one for the papacy.[1] Innocent had warned the princes that the man they selected must be acceptable to the Church, and he had also warned them that if they would not come to an agreement he would be compelled to take action, as it could no longer dispense with one who could defend it. In that case he would favour whoever was most deserving, taking into account the aims of the electors (studia).[2] Later on he openly decided in favour of Otto, and declared him king. As we have seen, his proceedings had caused intense anger in Germany, and from the conduct of Siegbert of Mainz and from the Pope's letter to the Archbishop of Cologne, it is evident that this was not confined to Philip's party. How strong that party was, is shown by the numerous and very powerful princes who forwarded a protest to the Pope. Innocent had thus every reason to be as conciliatory as possible in his reply, and the bull shows clear signs of his desire to propitiate the princes, so far as was possible without making any vital concessions. He emphasised the right of the princes to elect a king, whom the Pope was afterwards to promote to emperor, and declared that he was as unwilling to encroach on their rights as to allow others to encroach on the rights of the Church. He could not, however, forbear pointing out that they derived this right from the action of the Church in transferring the empire. He denied that his legate had meddled with the election, either as "elector" or as "cognitor." The legate had confined himself to announcing who was deserving of the kingship and who was unworthy. Innocent does not explicitly assert, as in previous letters, his claim to be entitled to make the "provisio imperii," but merely asks whether the Church could be expected indefinitely to dispense with a defender. But conciliatory as it is in tone, the bull made no real concessions. While in form Innocent based his action on the right to examine the fitness of the elected king, and to select where the electors were divided, he gave many reasons for his action which do not fall within those limits. The facts that Philip was under excommunication, was a perjurer and a persecutor of the Church, were relevant, so also were Otto's merits. The Pope, however, referred to many other points, such as irregularities in Philip's election and coronation, and the alleged majority of qualified electors in Otto's favour. He also raised a new point regarding the election—namely, that Philip's electors had lost their privileges by excluding princes entitled to take part in the election. Whatever Innocent's purpose may have been in mentioning matters not strictly relevant to the question of fitness of the rival kings for empire, they afforded material for future claims by the Church to deal with the regularity of the royal elections.[1]

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[1] *Vide* p. 203.

[2] *Vide* p. 205.

It is noticeable how persistently in his correspondence Innocent harped on Philip's relationship to his predecessors as a serious bar to his election. This attempt to make relationship a bar to succession was as revolutionary in its way as Henry VI.'s attempt to do away with elections. It was nearly three hundred years since Henry I. was elected as King of Germany, and from his time down to Philip's, Lothair was the only generally acknowledged king who seems to have owed nothing to relationship to the ruling house.[2] Another point deserving of notice is the gradual development of the theory that the election was vested in a few only of the German princes. In his letter to the German princes of 1200 [3] there is no attempt to deny that the majority of the electors were in favour of Philip. In the Deliberatio towards the end of 1200 it is admitted that he was elected by a majority of the princes, and by princes higher in rank than those who elected Otto (cum ipse a pluribus et digniriobus sit electus), but it is urged that as many or more (tot vel plures) of those specially concerned in the election of the emperor consented to Otto's appointment.[1] In the bull, "tot vel plures" has become "plures," who consented to receive Otto as king. With regard to the objection that Philip's electors had all forfeited their rights to take any part in the election by not allowing others to take part, Innocent is apparently extending to royal elections a rule of canon law; an instance of a tendency, still further developed later on, to apply ecclesiastical rules to matters concerning the empire.[2]

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[1] The bull was given in full in the compilation issued under Innocent's authority in his lifetime, but several passages were omitted in Gregory's collection. The most important omissions are "Verum nos . . . nolumus vindicare;" "Unde quia privilegium . . . recepit utrumque;" "In reprobatione . . . indigent manifesta." (All these passages will be found in italics in col. 80 of Friedberg's edition of the Decretals.)

The first passage omitted relates to his unwillingness to encroach on the rights of the princes. The second passage includes a reference to the coronation at Aix; both possibly points on which the curia in Gregory's time did not desire to lay stress.

[2] *Vide* Appendix. II.

[3] *Vide* note 1, p. 205.

It was no doubt from his desire to spare the susceptibilities of the German princes that Innocent was so careful to avoid the use of the word "confirmare." He was asked by Otto's supporters to confirm his election, and seventy years earlier Innocent II. had not hesitated to use this word with regard to Lothair and Conrad. The terms Innocent uses are such as "favorem apostolicam impertiri," "recipere in regem," "cujus nominatione approbata," "denuntiavimus regem," "consentire in regem," and so on.[3] Evidently Innocent felt that the word "confirmare" would give offence, for while a good many princes wavered between Otto and Philip, a prince did not necessarily become a papalist by changing over to Otto's side, and Innocent was a very practical statesman.

Innocent's case rested throughout on the union in one person of the German king, who on election becomes "Rex Romanorum," and of the emperor. In one of his letters he stated definitely that the person properly elected and crowned king should be summoned by the Pope to Rome to receive the imperial crown,[4] the very point on which Philip's supporters had laid stress. Innocent thus accepted the position that the king was also the person elected to be emperor, but he turned it against Philip's supporters by basing on this fact his right to examine the qualifications of the person so elected. Accordingly we find that, while before their letter he had only spoken of an election to the kingship, in later letters after he formally received Otto as king, he addressed him as king of the Romans elected to be emperor, and this became the regular title given by the curia to German kings before they received the imperial crown. On the other hand, it was a title very rarely used by German kings, who usually styled themselves "Romanorum rex et semper Augustus."[1]

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[1] *Vide* note 1, p. 32.

[2] Hugelmann, 'Die Deutsche Königswahl im Corpus Juris Canonici.'

[3] Reg. d. N., 1, 2, 15, 21, 29, 32, 33, 47, 51, 55, 56, 57, 58, 62, 64, 92.

[4] See p. 36, note 1.

Before announcing Otto to be king, Innocent had obtained from him his sworn acceptance of the papal territorial claims in Italy. On the 8th June 1201 at Neuss, Otto swore to respect these claims, so far as they were already in the possession of the Church, and to help to recover them where this was not the case. The oath would appear from the signatures to have been given before three papal officials. Apparently it was a secret transaction, and as it concerned rights of the empire, it was invalid without the consent of the princes.[2] The contest between Philip and Otto went on for some time with varying success. In 1203 the King of

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[1] Thus Philip's supporters, who had spoken of him as "elected to be emperor" in their first letter to the Pope in 1199, style him "Romanorum rex et semper Augustus" in their letter of 1202. So, too, Philip in his letter of 1206 to the Pope speaks of his being elected "in regem," though he speaks of receiving the "imperium" by his election (Reg. d. N. 36, cols. 1134 B and 1133 D). Frederick II. styled himself "imperator electus" after his first election as emperor in 1211, but after his second election in 1212 he styled himself, until his coronatien as emperor in 1220, "Romanorum rex et semper Augustus." As Philip's supporters in their challenge to tho Pope, to which the bull is an answer, maintained as firmly as ever the view that it was incumbent on the Pope to crown as emperor their duly elected king, the title of "Romanorum rex et semper Augustus" was clearly not intended to indicate any abandonment of their claim, and was apparently meant to show that the mere fact of his election in Germany gave him jurisdiction over the whole empire. (See Bloch, 'Die Staufischen Kaiserwahlen.' See V. and VI.) In a few exceptional cases Frederick adopted the style given him by the curia when writing rather difficult letters to the Pope.

[2] Reg. d. N. I. 77. "Actum Nuxiæ . . . in præsentia Philippi notari, Ægidii acolythi et Riccardi scriptoris præfati domini papæ."

Bohemia and the Landgraf of Thuringia deserted Philip for Otto. Next year the pendulum swung the other way, and Otto's cause was abandoned by Adolf, the Archbishop of Cologne, by the King of Bohemia, and by Otto's brother Henry, while the Landgraf of Thuringia was subdued by force of arms. Early in 1205, Philip, having got possession of Aix, formally laid down his crown and gave up his title. He was re-elected, and crowned for the second time by the Archbishop of Cologne. A chronicler reports that this was done by Philip by the advice of the princes, that they might not lose their old freedom of election, and that his election might be unanimous. As we have previously pointed out, the coronation at Aix by the Archbishop of Cologne was considered an important element in the legitimacy of a king, and no doubt Philip and his supporters wished to cure any possible defects in his coronation. So far as the fresh election is concerned, it has been suggested that the princes wished to guard against undue importance being attached to the coronation as compared with the election.[1] In 1206 there was a meeting of a number of German princes, attended among others by Wolfger the Patriarch of Aquileia, whom the Pope deputed to persuade Philip to abandon his support of Lupold of Mainz, and to make a truce with Otto and the people of Cologne. Philip's answer was a very conciliatory letter to the Pope, setting out why he had allowed himself to be elected king to govern the empire. He offered to submit to the decision of his princes and of the cardinals on the action to be taken to restore peace and concord between the Church and the empire (inter sacerdotium et imperium), also on the satisfaction to be given for wrongs done by him to the Church. On the other hand, he would leave it to the Pope's own conscience to decide if he had done any injury to Philip or to the empire. The letter leaves no doubt that Philip still claimed to be the duly elected king, the ruler of the empire, and did not leave this to the Pope's decision.

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[1] See the discussion by Bloch, 'Die Staufischen Kaiserwahlen,' p. 73 f., and Rodenberg, 'Wiederholte deutsche Königswahlen,' p. 10 f.

The writer of the Chron. regis Colon., &c., ed. Waitz, p. 219, tells us "Philippus igitur rex . . . cum universis pene principibus regni Aquisgreni venit . . . Ibi rex consilio cum suis habito, ut principes suam liberam electionem secundum antiquitatis institutum non perdant, regium nomen et coronam deponit et ut concorditer ab omnibus eligatur, precatur."

Innocent did not apparently reply to Philip, but he wrote Wolfger expressing his general satisfaction with the letter, though he could not accept Philip's solution of the Lupold question.[1] Negotiations commenced, and by November 1207 they were so far advanced that Philip had been granted absolution, and that Innocent wrote him direct.[2] In 1208 Innocent deputed Hugolinus to Germany for the final negotiations. While on his way there he received the news of Philip's murder on the 21st June.[3]

Immediately on hearing of Philip's death, even before receiving Otto's report, Innocent took action to secure Otto's peaceable reception as king by all the German princes.[4] He assured Otto of the unwearied efforts he had made on his behalf, and authorised him, if he thought it advisable, to proceed with the marriage of Philip's daughter, as had been proposed in the negotiations proceeding at the time of Philip's death.[1] He wrote all the archbishops and bishops, directing them "in virtute obedientiæ" to do all in their power to prevent the election of another king, and he forbade them on pain of anathema to anoint or to crown any one else.[2] He also wrote a general letter to all the German princes, ecclesiastical and secular, to seek the peace of the empire, and to support Otto.[3] In addition he sent letters to a number of princes individually, insisting in the case of ecclesiastics on the duty of obedience under their oath to him.[4] They must therefore support Otto, in whose favour divine providence had clearly declared itself. We can here only draw attention to the very great importance politically of this subordination of the bishops to the papacy in secular politics.

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[1] Reg. d. N. 136 (col. 1135 C). Philip to Innocent, 1206. "Præterea pro reformanda pace et concordia inter vos et nos, inter sacerdotium et imperium, quam nos semper desideravimus, subjiciemus nos vestris cardinalibus et nostris principibus, . . . Item si nos in aliquo vos vel sacrosanctam Romanam Ecclesiam offendisse videmur, nos ad satisfaciendum vobis supponimus nos vestris cardinalibus et nostris principibus, . . . Si vero vos in aliquo nos vel imperium læsisse videmini, nos pro honore Domini nostri Jesu Christi cujus vicem in terris geritis, et ob revenentiam beati Petri . . . cujus vicarius estis, et ob salutem nostram, conscientiæ vestræ super iis vos relinquimus."

Reg. d. N. 137. Innocent to Wolfger. "Responsionem autem ipsius (*i.e.*, of Philip) gratam in multis habemus, tum quia sapit catholicam veritatem, tum quia piam devotionem ostendit."

Vide also Innocent's letter to Otto, 138.

How far Innocent had moved from his previous position appears from the fact that he tolerated the receipt by Wolfger of his regalia from Philip.

[2] Reg. d. N. 143. In the heading of the letter, as given in Migne, Philip is called Duke of Swabia, but in the letter the Pope addresses him by the title of "serenitas," a title only used by Innocent, so far as we have observed, in writing to kings.

[3] Reg. d. N. I. 152. Letter of Hugolinus to the Pope. "Officio igitur legationis injunctae judicio divini numinis exspirante, ad vos cum festinatione regredior; a quo invitus, licet obedire non renuens, sum egressus."

[4] The letters (Reg. d. N. 153-159) are undated, but from a letter to Otto (161, dated 20th July) it appears that the Pope sent off his letters before Otto's letters arrived, so it must have been within very few days of hearing of the murder.

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[1] Reg. d. N. 153. Innocent to Otto, July 1208. "Novit ille qui scrutator est cordium et cognitor secretorum quod personam tuam de corde puro et conscientia bona et fide non ficta diligimus et ad honorem et profectum tuum efficaciter aspiramus, sicut opera manifestant quæ pro te non dubitavimus exercere. Licet autem te deseruerint quasi solum amici pariter et propinqui, nos tamen in tua dilectione constantes, ea studio diligenti non destitimus operari quæ secundam tempus tibi credimus expedire, vigilantes pro te quando tu forsitan dormiebas; quinetiam propter te multa passi sumus adversa, quæ nec etiam tibi voluimus intimare cum adversitas te premebat."

[2] Reg. d. N. I. 154. Innocent to the Archbishop of Magdeburg and his suffragans. "Quocirca fraternitati vestræ per apostolica scripta mandamus et in virtute obedientiæ districte præcipimus quatenus ad pacem imperii fideliter intendentes, nullatenus permittatis, quantum pro viribus impedire potestis, ut quisquam de novo eligatur in regem, ne fiat novissimus error pejor priore. Ut autem ominis tollatur occasio malignandi, nos tam vobis quam aliis archiepiscopis et episcopis sub interpositione anathematis auctoritate apostolica interdicimus ne quis alterum inungere vel coronare præsamat."

[3] Reg. d. N. 155. Innocent to all the princes ecclesiastical and lay of Germany, July 1208. "universitatem vestram rogandam duximus et monendam, per apostolica vobis scripta mandantes . . . quatenus ad pacem imperii fideliter intendatis, consentientes dispositioni divinæ, quæ circa charissimum in Christo filium nostrum illustrem regem Ottonem evidenter elucet, eique ad regendum imperium efficaciter assistatis."

[4] *E.g.*, Reg. d. N. 157. To the Archbishop of Salzburg, July 1209. "per apostolica tibi scripta præcipiendo mandantes sub debito juramenti quo nobis in hac parte teneris, . . . quatenus divinæ dispositioni consentiens, quæ circa charissimi in Christo filium illustrem regem Ottonem evidenter elucet, iura et nostrum judicium approbando, ei patenter et potenter adhæreas, impendendo sibi auxilium et favorem." Innocent claimed from his bishops obedience even in matters relating to the empire, under their oath of fidelity, *vide* Reg. d. N. I. 71 to the Bishop of Langres. "Præterea cum ab Ecclesia Romana, cui tenetur juramento fidelitatis astrictus, nulla debuerit ratione divertere vel ab ea quomodolibet dissentire, ipse, ex quo ei patenter innotuit super negotio imperii nostræ beneplacitum voluntatis, non solum se ipsi opponere non expavit. . . ."

Philip Augustus made a fruitless attempt to set up a rival to Otto. Many, however, of Otto's former opponents, though they would not support a rival, insisted on a fresh election. There was accordingly a meeting of the Saxon princes at Halberstadt on the 22nd September, at which Otto was elected, according to the chroniclers, as emperor. There was a larger gathering of the princes at Frankfort, at which Otto was elected "in regem." There can, we think, be little doubt that the German princes intended these elections to be a demonstration of their electoral rights as against the Pope. In some cases princes only reckoned his kingship from the Frankfort election.[1]

Negotiations followed regarding Otto's summons to Rome to receive the imperial crown. Innocent dwelt on the great importance of harmony between the Church and the empire; if they worked together nothing could stand against them. He pointed out, on the other hand, the evils arising from dissensions between these two great powers, and urged on Otto the importance of removing any causes of discord and suspicion, and pressed him to grant the requests which would be presented to him by the papal legate.[1] This was in the middle of January, and the result was, no doubt, the undertaking given by Otto in March 1209 at Speyer. The oath at Neuss in June 1201 had dealt mainly with the territorial claims of the papacy in Italy. The engagements then made were reproduced in the Speyer promise, and Otto now also undertook that episcopal elections should be freely held, and decided by the chapters or by the larger and "sanior" part of the chapters (thus giving up the very important right of dealing with disputed elections). He also gave entire freedom of appeal to the Apostolic See in ecclesiastical cases. He gave up all claims to the "spolia." All "spiritualia" were to be disposed of freely by the Pope and by other prelates of the Church. He undertook to give effective help in suppressing heresy. The promise was countersigned by the chancellor, the Bishop of Speyer, but was not supported by the signature of any other German princes.[2] Innocent also, in the end somewhat grudgingly, had given his assent to Otto's marriage to Beatrice, the daughter of Philip.[3] It was of importance for Otto as a means of conciliating the friends of the Hohenstauffen family, and Otto was betrothed to her in May 1209.

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[1] See Bloch, 'Die Staufischen Kaiserwahlen,' p. 82 f. He quotes the 'Gesta episc.; Halberstad': "Plerique principes imperii . . . regem Ottonem in imperatorem unanimiter elegerunt," and from Arnold of Lübeck's chronicle: "ac si divinitus inspirati pari voto et unanimi consensu Ottonem in Romanum principem (*i.e.*, emperor) et semper augustum elegerunt." It seems likely that the princes meant by the election to assert the necessity of their votes to make the election of Otto complete, but it is not apparent why they should have given the title "imperator" after so many German princes had avoided doing this in 1202. There is no evidence that the result of the Halberstad meeting was reported to the Pope. In the case of the subsequent meeting of the princes at Frankfort on the 11th November 1208, at which Otto was elected "in regem," there appears to have been no formal report to the Pope, but he was informed of what had happened by individual clerics who were present. On hearing the result of the meeting, Innocent wrote the Bishop of Cambrai and the Archbishop of Magdeburg, who apparently had reported the "promotion" of Otto, and corrected it in both cases, to mere confirmation of his promotion.

Reg. d. N. 172. To the Bishop of Cambrai. "Litteras tuas . . . recepimus . . . per quas de promotione, quinimo quasi de confirmatione promotionis . . . Ottonis." Similarly in 173 to the Archbishop of Magdeburg. See on the whole subject besides Bloch, Rodenberg, 'Wiederholte Königswahlen.'

The first signs had already appeared that all would not be well between Otto and Innocent. Sometime before March, probably in February 1209, Otto had written the Pope complaining that Frederick was stirring up trouble against him. He begged Innocent most earnestly not to support Frederick, and not to take any action in his favour till Otto could discuss the matter personally with him in Italy.[1] Innocent replied that Frederick's father and mother had both of them entrusted Frederick to the care of the Roman Church, that he was a subject of the Church and owed fidelity as a vassal, and the Church must therefore support him. Thus it was impossible for the Pope to withdraw his help from Frederick, but it would not be used to injure Otto.[2]

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[1] Reg. d. N. 179. 16th January 1209.

[2] M. G. H., Const. II. 31. Otto's agreement at Speyer, 22nd March 1209. "Illum igitur abolere volentes abusum, quem interdum quidam predecessorum nostrorum exercuisse dicuntur in electionibus prelatorum, concedimus et sanctimus, ut electiones prelatorum libere ac canonice fiant, quatinus ille prefitiatur ecclesie viduate quem totum capitulum vel maior et sanior pars ipsius duxerit eligendum, dum modo nichil ei obstet de canonicis institutis."

Thus Otto seems to have abandoned the right to be present at elections and to decide in cases of disputes.

[3] The letters on the subject are Reg. d. N. 153, 169, 177, and 178.

Otto started from Augsburg on his way to Rome for the imperial coronation about the end of July.[3] He had been preceded by Wolfger, Patriarch of Aquileia, whom he had appointed as his legate in Italy in January 1209. Wolfger, on his return from the imperial court to Italy in March, took vigorous action to recover imperial rights usurped by Italian cities. Innocent had, at Wolfger's request, recommended him to the cities of Lombardy and Tuscany,[4] but Wolfger extended his action to lands claimed by the Pope, and included in Otto's concession. Innocent sent Wolfger an extract from Otto's oath at Neuss in 1201.[5] We are not informed of the details of what followed, but we find that after Otto's arrival in Italy he pursued the policy adopted by Wolfger regarding imperial claims, notwithstanding his engagements to the Pope.

Negotiations with the Pope proceeded, and evidently Innocent had to recognise that he could not compel Otto to honour obligations which had not been confirmed by the German princes.

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[1] Reg. d. N. 187. Probably February 1209.

[2] Reg. d. N. 188. Innocent to Otto, 10th March 1209. Another minor sign that relations were no longer so cordial is a change in the form of address to the Pope. In his letters from Germany, after Philip's murder, he addressed Innocent "Reverendo in Christo Patri . . . Dei gratia sanctæ Romanæ sedis summo pontifici, Otto, eadem gratia et sua" (Reg. d. N. 160 and 187). The "et sua" is dropped in his letters from Italy (190 and 193).

[3] See on the relations between Otto and the Pope from the time of his re-election to his invasion of the Sicilian kingdom, Winkelmann, 'Philipp v. Schwaben und Otto IV.,' vol. ii. book i., and book ii., chaps. 1 and 2, and especially Beilage, viii. 4, 'Otto's versprechungen vor oder bei seiner Kaiserkrönung.' As regards Innocent's letter to Otto of 11th November 1209 (R. xii. 124), referred to by Winkelmann, l.c., p. 195, note 3, it does not appear to have any bearing on the matter. Otto's Speyer declaration regarding the suppression of heresy would only seem to cover action within the empire.

[4] Reg. d. N. 185. See also Reg. XII. 78.

[5] Reg. d. N. 186.

Innocent crowned Otto on the 4th October, although pending questions were not all settled. Otto had to leave Rome immediately after the coronation, but endeavoured to arrange a meeting with the Pope a few days later in order to arrive at an agreement. This Innocent declined,[1] but negotiations evidently went on for a time. According to Innocent, Otto refused an offer to refer to arbitration matters in dispute, and proceeded with his assertion of imperial rights, notwithstanding the claims of the Church. Otto brought matters to a head in February 1210 by appointing Dipold of Acerra to be Duke of Spoleto. Dipold proceeded to style himself also "Magister Capitaneus" of Apulia and of the Terra Lavoris, parts of the Sicilian kingdom.[1] This was a declaration of war, not only against Frederick, but also against Frederick's liege lord, the Pope, and it is remarkable that Innocent did not take up the challenge till after Otto had crossed the border of the kingdom of Sicily in November 1210.

Though Innocent was unwilling to break finally with him, yet he as well as Otto had for some time been preparing for the coming struggle. Otto, for instance, extorted from the Archbishop of Salzburg in July 1210 a promise of support, even against the Pope, in matters concerning the honour of the empire and of the emperor.[2]

Otto crossed the frontier of the Sicilian kingdom early in November. Innocent took immediate action, excommunicating him and releasing his subjects from their allegiance,[1] and he also entered into negotiations with Philip of France to secure his support.[2] Two months later he called on the German princes to elect another in Otto's place.[3] A little later again he stirred up the Italian subjects of the emperor, calling on the bishops to publish the sentence against Otto, and to hold no services in any place where he might stay. He also stated that he would declare him guilty of heresy if he continued to have divine services celebrated in his presence.[4] It is reported that even at this late stage Innocent made another attempt to come to terms with him. The very well-informed writer of the 'Ursperg Chronicle' states that he heard from the papal agent that Innocent was willing to put up with all the territorial losses incurred, provided Otto would keep his hands off Philip of France and the Sicilian kingdom, but that it was all in vain.[5]

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[1] Reg. d. N. 193 and 194.

[2] M. G. H., Const. II. p. 47. 'Confœderatio' of the Archbishop of Salzburg, 3rd July 1210. "Notum facimus universis . . . quod nos occasione discordie inter dominum papam et dominum nostrum O. serenissimum Romanorum imperatorem exorte memoratum dominum nostrum imperatorem nunquam deseremus; quin nos in omnibus hiis, que honorem imperii et sue persone respiciunt, promovendis sibi tanquam legittimo domino nostro, et in rebus et in persona, pro viribus nostris assistemus et contempto mandato apostolico, si quod forte dominus papa daret in contrarium, ad manutenendum honorem suum et imperii ipsi domino nostro auxilio pariterque consilio semper aderimus et bona fide tum contra papam tum contra quemlibet alium hominem, nulla impediente occasione, ad conservandum honorem suum et imperii perpetuo ipsum pro posse nostro iuvabimus."

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[1] See Winkelmann, 'Philipp von Schwaben und Otto IV. von Braunschweig,' p. 245 f. We have not the text of Innocent's order, but he refers to it in a letter to the Pisans, dated 22nd December 1210. Reg. XIII. 193.

[2] Böehmer, 'Acta Imperii Selecta,' 920. 1st February 1211. Innocent to Philip of France.

[3] L.c., 921, April 1211. To all the princes of Germany. In this letter Innocent mentions that he has excommunicated and anathematised Otto "pro eo, quod beneficiorum nostrorum ingratus et promissionem suorum oblitus maligne persequitur præfatum regem Siciliæ orphanum et pupillum, apostolicæ protectioni relictum, nequiter invadendo regnum ipsius et Romanæ ecclesiæ patriminium, contra sacramenta et scripta sua et contra iura et monimenta nostra, cum semper parati fuerimus et sæpe obtulerimus ei iustitiæ plenitudinem exhibere coram arbitris communiter eligendis."

He also warned the German princes that should Otto succeed in his designs "ad eam vos conditionem rediget, ad quam avus et avunculus eius barones Angliæ redegerunt; . . . Nec nobis obiiciatur a quoque, quod toto conamine procuravimus promotionem eius; quia non credebamus eum, quod subito est effectus, immo qualem ipse se subito demonstravit. Nam deus, qui omnia noverat antequam fierent, promoveri fecit Saulem, statura procerum, in regem, quem ipse ipsius culpa postea reprobavit et ei pium substituit iuniorem, qui regnum optinuit et possedit; quæ res instantis temporis est figura."

[4] Böehmer, 'Acta Imperii Selecta,' 922. Innocent III. to the bishop and clergy of Cremona, 7th July 1211.

[5] Burchardi et Cuonradi Urspergensium Chronicon. Editors Abel and Weiland, p. 93. "Sane ne tanta turbatio fieret in ecclesiis et populo Christiano, voluit domnus papa sustinere omne dampnum, quod sibi imperator in terris ecclesie Romane interiisset aut inferret. Hanc forman compositionis cum recusset imperator admittere, domnus papa, tamquam vir animosus et confidens in Domino, tua ardua negotia simul explere disposuit."

Otto began his second campaign in the south of Italy in the beginning of March, and by October he was about to cross over to Sicily. Frederick is said to have had ships ready for flight, when events in Germany changed the whole situation.

After Otto's excommunication a movement against him had commenced in Germany, led by Siegfried of Mainz, the Landgraf of Thuringia, and the King of Bohemia. In the early summer Siegfried published the excommunication of Otto by the Pope. Ottocar of Bohemia was the first of the princes openly to rebel against Otto, and to declare himself in favour of Frederick of Sicily. Innocent was very careful not to intervene openly in the choice of a successor to Otto, but he had, in his letter of February 1211 to the German princes, shown pretty clearly that Frederick would be acceptable to him.[1] In September a number of German princes assembled at Nurnberg and elected Frederick "in imperatorem."[2] The princes who took part in this election were obliged to look to the Pope for support, and they asked him to confirm their election; they were so far in a minority, though a very important minority.

Otto, hearing of these movements in Germany, made his way back instead of crossing to Sicily. He was delayed by further fruitless negotiations with the Pope and by disturbances in the north of Italy, so he did not get to Frankfort till the middle of March 1212.[3] On his arrival in Germany he found many even of the bishops and abbots still faithful, and many of the rebels now returned to his allegiance. In order to strengthen his position and to secure some following among the friends of the Hohenstauffen, Otto married (on the 22nd July) Philip's daughter, Beatrice, to whom he had been betrothed since 1209. Unfortunately for Otto she died on the 11th August. Otto was at the time besieging Weissensee, and the disastrous results of her death were immediately apparent. The Swabians and Bavarians at once left his camp, and so many of his followers abandoned him that he had to give up the siege. Presently he moved to the south to deal with the threatened entry of Frederick upon the German scene.

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[1] *Vide* p. 228, note 3.

[2] M. G. Leg., Sec. iv., Cons. II. Nos. 43 (26th September 1212) and 44 (19th November 1212). See on the subject of this election Bloch, 'Die Staufischen Kaiserwahlen,' p. 89 f. There can be little doubt that Frederick was elected as emperor and not as king, and for some time after he had accepted the offer of the German princes he styled himself "Romanorum imperator electus."

[3] For the rebellion in Italy and Germany, see Winkelmann, 'Philipp von Schwaben und Otto IV.,' vol. ii. book ii. chap. iv.

After Frederick's election had been reported to the Pope, negotiations went on for some time on the subject, and finally, with Innocent's support (consilio et interventu), Frederick was hailed as emperor (imperator collauderetur) by the citizens and the people of Rome, and the Pope confirmed his election.[1] This was not, however, till after the consent of Frederick had been obtained, and the Pope and Frederick had come to terms. Frederick's consent was not given as a matter of course; his wife Constance and the Sicilian nobles were strongly opposed. We have no detailed account of the negotiations between Frederick and the Pope, but some of the conditions are clear from documents executed in February 1212. Frederick had to swear to be faithful to the Pope and to his successors; he placed on record the territories he held from the Pope and the tribute (census) to be paid. He undertook personally to do homage when summoned to appear before him. He had also to accept a concordat regarding ecclesiastical elections in the same terms as the one forced on his mother in 1198.[2] It was not till he had done all this

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[1] Burchardi et Cuonradi Urspergensium Chronicon, p. 373, 43. "Dictus vero Anshelmus magno labore et periculis plurimis Romam usque pervenit; ibique consilio et interventu domni Innocentii papæ obtinuit, ut a civibus et populo Romano Fridericus imperator collauderetur et de ipso factam electionem papa confirmavit."

Innocent IV. appears to refer to this incident in his excommunication of Frederick on the 17th July 1245 (Epis. Sae. XIII., vol. ii. 124, p. 90), for after mentioning the oath given by Frederick "priusquam esset ad imperii dignitatem electus," he goes on, "et, sicut dicitur, illud idem (*i.e.*, homage), postquam ad eandem dignitatem electus extitit et venit ad Urbem" was repeated by him in the presence of the Pope.

[2] M. G. H., Const. II. No. 411, oath by Frederick to Innocent, Feb. 1212, at Messina.

No. 412, undertaking by Frederick, February 1212, at Messina to do that he added to his title of King of Sicily that of emperor elect.[1] At the request of the Pope, Frederick had his infant son Henry crowned as King of Sicily.[2] It seems probable that the object was ultimately to do away with the personal union between Sicily and the empire, as Frederick agreed to do in 1216. Another reason for the coronation was no doubt to secure a successor, with a good legal title, before he started on his very adventurous expedition to Germany. He commenced his journey in March, and arrived in Rome about the middle of April. At Rome, where he did homage to the Pope for the Sicilian kingdom, he was very kindly received by Innocent and helped with money, and there he styled himself emperor elect by the grace of God and of the Pope.[3] Frederick left Rome by the end of April or early in May, but was unable to cross the Italian frontier till some time in August, as he had to make long halts at various towns in Northern Italy to avoid Otto's supporters. He arrived at Constance in September, a few hours before his rival, who was also on his way there. His occupation of Constance gave him time to rally his supporters in Germany, thus enabling him to hold a meeting of his supporters on the 5th December at Frankfort. There he was elected king by a large number of German princes in the presence of the legate and of envoys from France. From that time onward, with very rare exceptions, Frederick dropped the style of emperor elect,

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homage, when required by a Pope, for the kingdom of Sicily, dukedom of Apulia, and to pay tribute.

No. 413, same time and place, agreeing to same conditions regarding clerical elections as his mother Constance had been obliged to accept in 1199, *vide* p. 196, note 2.

No. 414, April 1212 at Rome, Frederick entered into further agreement with the Church of Rome regarding expenses incurred on his behalf.

[1] The first letter in which Frederick styles himself "Romanorum imperator electus" is at Messina in February 1212 in a privilege granted the Archbishop of Monreale. H.-B., vol. i. p. 204.

[2] See Winkelmann, 'Philipp v. Schwaben und Otto IV.,' vol. ii. p. 316, notes 4 and 5, where it is shown Henry was probably crowned in February 1212.

[3] H.-B., vol. i. p. 227. In confirming a grant to the Roman Church, Frederick wrote on the 15th April 1212 at Rome, "Sanctissimo patri . . . Innocentio . . . Fridericus Dei et sui gratia rex Sicilie . . . in Romanorum imperatorem electus et semper Augustus."

and adopted that of "Romanorum rex semper Augustus et rex Siciliæ."[1] By the summer of 1213 a large part of Germany had accepted Frederick, and at a meeting held at Eger on the 12th July of that year he paid his price for the papal support. He renewed, almost word for word, the promise given by Otto at Speyer in 1209, and supported it by a personal oath. Innocent, however, was not content with this, and required the assent of the German princes. A number of them, including such important persons as the Archbishops of Mainz and Salzburg, the King of Bohemia, the Dukes of Bavaria and Austria, and the Landgraf of Thuringia, signed the document as witnesses. The Pope also got the express consent of individual princes in subsequent years.[2] The curia was not satisfied even with these agreements, and had them strengthened later on in the time of Honorius III.,[3] but Innocent had by the agreement he obtained put the territorial claims of the Church on a legal basis, accepted by the German princes. As in the case of Otto's Speyer agreement, the clauses relating to the Church seriously modified the powers left to the emperor by the concordat of Worms.

Fighting went on during 1213 without any decisive results. In the following year the victory of Philip Augustus at Bouvines (27th July 1214) put an end to any chance of a victory by Otto. In 1215 Aix went over to Frederick, and he was crowned there for the second time. As there was at that time no Archbishop of Cologne recognised by the Pope, he was crowned by the Archbishop of Mainz on the 25th July. It was on this occasion that Frederick took the cross, the cause of so much trouble to him later on. A few days later the city of Cologne, Otto's last stronghold outside his own domains, also accepted Frederick, and Otto had to retire to Brunswick. Although Otto lived three years more and never gave up the struggle, yet he was unable to affect seriously Frederick's hold over the greater part of Germany.

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[1] M. G. H., Const. II., vol. ii. No. 451. Letter of Bishop Conrad to Philip Augustus, December 1212. There has been much controversy over this election, the protagonists being Bloch in his 'Die Staufischen Kaiserwahlen' and Krammer in his 'Der Reichsgedanke des Staufischen Kaiserhauses' and 'Das Kurfursten Kolleg, &c.' We are inclined to agree with Bloch that it is to some extent a tacit assertion, by the majority of the German princes, that it was for them alone to elect a king, a ruler over the empire. The fact that a papal legate was present does not appear to us necessarily to imply papal approval. Forty years later a papal legate was present at the second election of William of Holland at Braunschweig, a proceeding certainly distasteful to the curia.

[2] M. G. H., Const. II. No. 46-51, 12th July 1213 and 6th October 1214.

[3] M. G. H., Const. II. No. 65-66, September 1219; No. 72, 3rd April 1220.

Otto's supporters tried to reopen the question of his deposition at the Lateran Council in 1215. Innocent stopped a very hot controversy that arose, and at a subsequent meeting declared Frederick's election by the German princes to be emperor approved and confirmed.[1]

Frederick's succession to the empire would have been impossible, as far as one can judge, without the support of the Pope. This contributed to weaken the coalition against Philip Augustus, which was defeated at Bouvines, a landmark in European history, but it also led in the end to the catastrophic struggle between the papacy and the Hohenstauffen—a danger to which Innocent was not blind, but which he could not avert.

Innocent relied in his dealings with secular powers mainly on his authority as vicar of Christ. He did not disdain nor neglect to use authority of human origin, as, for instance, that of a feudal lord, but such powers were treated by him as of human origin, and not as belonging to the Pope as Pope. His conception of the papal authority was no less exalted than that of his great predecessor Gregory VII., but he handled it much more as a lawyer, systematising where possible the use of his powers. Thus in the bull (finally embodied in the Decretals) Innocent based his right to deal with quarrels between princes on his authority to decide where questions of sin were involved. Again, in the case of the empire, he claimed the right to examine the qualifications of the king elected by the German princes as, if we may use the expression, a matter of official routine.

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[1] According to Richard of San Germano (p. 94 Serie I. Cronache of the Societa Napoletana di Storia Patria), the question was brought up, and there was a hot controversy. Finally, "dominus papa manu innuit et egredientibus ceteris, ipse ecclesiam est egressus." At another sitting a few days later "predicti etiam regis Frederici electionem per principes Alamannie factam legitime in imperatorem Romanum approbans confirmavit."

Innocent had not carried the majority of the German princes with him, and his claims to interfere in German elections or to nominate in case of disputes were not generally admitted, but we must reserve our remarks on this subject for a later chapter.

CHAPTER III.

FREDERICK II., HONORIUS III., AND GREGORY IX.

Honorius, who was elected Pope on the 18th July 1216, two days after the death of Innocent III., was of a very different temperament to his great predecessor,[1] and accordingly, though there was no change in the policy of the curia, yet the methods were different, and the great struggle with the Hohenstauffen was postponed.

When the pontificate of Honorius began, the Church was not in full possession of the lands included in the promise made by Frederick at Eger in 1213, as it was not till the contest with Otto was over that Frederick could attend to affairs in Northern Italy; but by 1221 the Pope was able to announce to the world that the Church of Rome had received possession of the lands it had claimed, and to acknowledge the help given him by Frederick.[2] The Pope and the emperor did not agree as to the rights left to Frederick as emperor in these lands, and there was trouble over his claims to armed assistance from papal subjects in 1226. Frederick also appears to have alarmed the curia by suggesting at a conference at Vercelli in 1222 that it should employ him as its agent to govern these lands.[3] The friction that arose from time to time was not in itself very serious, but it must have played its part in strengthening the determination of the curia to secure for itself supporters in Italy by protecting Milan and its friends from Frederick.

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[1] In an early letter Honorius gives a characteristic description of his methods. Epis. Sae. XIII., vol. i. 31, 10th May 1217. "Plerumque dissimulanda sunt quedam et ad tempus conniventibus oculis toleramda, que possunt scandali materiam suscitare, cum et Veritas ipsa quedam fecerit ex temperantia equitatis pro vitando scandalo Iudeorum."

[2] L.c., 165, 18th February 1221. The letter is addressed "Universis presentes litteras inspecturis."

[3] Ficker Forschungen, &c., vol. iv. 334, 5th May 1222. Honorius to the people of Spoleto. Besides informing

Another source of trouble was due to differences regarding ecclesiastical appointments in the Sicilian kingdom. Frederick, before he was accepted by Innocent as the future emperor, had undertaken to allow freedom of election in his Sicilian kingdom, but it was subject to his assent to the persons elected.[1] Honorius in a number of cases refused to accept the elections made, and finally, after the sees had long been vacant, filled them up without consulting Frederick.[2] This and the question regarding Frederick's rights in the papal states were the cause of a very angry correspondence between Frederick and the Pope in 1226, in which the emperor disclosed his real feelings towards the Church by accusing the Papacy of having failed in its duty towards him when Innocent III. was his guardian during the time of his minority.[3]

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the people of Spoleto that neither he nor the cardinals had agreed, though much pressed, to anything "quod esset in preiudicium apostolice sedis," he also refers to the action of Gunzelin, the imperial legate, in endeavouring to seduce the people of Viterbo "a devotionis soliditate fideles nostros avertere" and "ut imperatori debeant facere juramentum."

See also Theiner, 'Codex Diplomaticus Dominii Temporalis,' vol. i. 115, 116, 119, 121 of 22nd November 1222; 123, 20th December 1222; 124 and 125, 1st January 1223; 117, 118, 120, not dated, but all apparently of November 1222. They deal with Gunzelin's behaviour and Frederick's emphatic disavowal of his actions.

[1] M. G. H., 'Const.,' II. 412, February 1212. Privelegium Friderici II. Regis. In this compact with the Pope, clause (5) regarding elections provides "secundum Deum per totum regnum canonice fiant de talibus quidem personis, quibus nos et heredes nostri requisitum a nobis prebere debeamus assensum."

[2] Epis. Sae. XIII., vol. i. 283, 25th September 1225. Honorius to Frederick. He has in appointing selected "de personis tibi merito acceptandis," and appointed them with the advice of the cardinals "sine tuo preiudicio."

[3] L.c., 296. Honorius to Frederick, beginning of May 1226. The first part of the letter sent by Frederick is known to us by the Pope's reply, from which it appears that the emperor complained of his treatment by the Church during his minority (p. 217 l. 13 f.): "Circa tutelam quoque tui, a clare memorie imperatrice Constantia regina Sicilie apostolice sedi relictam, a beneficiorum gratia excipis, . . . susceptio, que a gratia sumpsit exordium, habere te debuit de prosecutionis debito non ingratum, saltem ut tutrici notam non solum suspecte sed etiam fraudulente administrationis non itereris impingere,

The question of elections to vacancies became acute again in the time of Gregory IX., and was among the causes stated for his excommunication in 1239.[1]

As we have seen, Frederick had taken the Cross in 1215, and after that he made repeated promises to start by a fixed date, and had to get the Pope's consent to repeated postponements. The final promise was made in July 1225 to start in August 1227,[2] and Frederick's failure to carry it out was the immediate occasion of Gregory's first excommunication. Though peace was restored after a time, yet both sides had shown their mutual distrust and fundamental hostility, and the ground was prepared for the final struggle between the papacy and the Hohenstauffen family which began in 1239, and only ended with the death of Conradin in 1268. The main cause of this hostility was the union of the imperial Government and of the Sicilian kingdom in Frederick's hands, as it endangered the papal independence, unless a counterpoise could be found by the curia in Northern Italy.

Innocent had long foreseen the dangers of the situation, and a few days before his death, Frederick had given a written undertaking immediately after his coronation to release his son Henry from subjection to his authority and hand over to him the kingdom of Sicily to be governed during his minority by some person approved by and responsible to the Pope.[3] It is very doubtful whether, Innocent once out of the

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dicens quod ecclesia nomine defensorum hostes immiserat Apulie. Habebat preterea diffamationis adiectio, quod quem tutrix ecclesia debuit promovere, deiecit, erigens in paterna sede hominem alienum (*i.e.*, Otto), qui non contentus imperio ad regnum nihilominus aspiravit."

L.c., p. 222 l. 4. Honorius warns Frederick "Non ergo seducant te prospera,"

[1] L.c., 741, p. 637 l. 38 f.

[2] Frederick's letter to the Pope (M. G. H., Const., II. 103) is dated 28th July. With the letter he sent the golden bull (l.c., 102), dated July 1225, containing his promise, and declaring (p. 130, l. 44 f.) "Si autem defecerimus in aliquibus vel in aliquo ceterorum, ecclesia Romana sentiabit in nos et in terram nostram de spontaneo et iam prestito consensu nostro."

[3] L.c., 58, 1st July 1216. "Sanctissimo in Christo patri et domino suo Innocentio. . . . F. Dei et sui gratia Romanorum rex et semper augustus et rex Sicilie. . . . Cupientes tam ecclesie Romane quam regno Sicilie providere, promittimus et concedimus, statuentes ut, postquam fuerimus imperii coronam adepti, protinus filium

way, Frederick ever intended to fulfil his promise. A few days after his death Henry was taken to Germany, where he was appointed in 1217 Duke of Swabia. In 1218 Henry dropped the title of King of Sicily.[1] In April 1220 he was elected king by the German princes. This was inconsistent, in spirit if not in letter, with Frederick's promise of 1216, repeated in February 1220, and Frederick and his chancellor both wrote the Pope. Frederick explained the election as due to the sudden conviction of the princes, owing to a serious quarrel among them, that such an appointment was necessary during Frederick's approaching absence on crusade.[2] The

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nostrum Heinricum, quem ad mandatum vestrum in regem fecimus coronari, emancipemus a patria potestate ipsumque regnum Sicilie, tam ultra Farum quam citra, penitus relinquamus ab ecclesia Romana tenendum, sicut nos illud ab ipsa sola tenemus; ita quod ex tunc nac habebimus nec nominabimus nos regem Sicilie, sed iuxta beneplacitum vestrum procurabimus illud nomine ipsius filii nostri regis usque ad legitimam eius etatem per personam idoneam gubernari, que de omni iure atque servitio ecclesie Romane respondeat, ad quam solummodo ipsius regni dominium noscitur pertinere; ne forte pro eo, quod nos dignatione divina sumus ad imperii fastigium evocati, aliquid unionis regnum ad imperium quovis tempore putaretur habere, si nos simul imperium teneremus et regnum, per quod tam apostolice sedi quam heredibus nostris aliquod posset dispendium generari."

It is noticeable that in this letter Frederick calls the Pope his "dominus." This may have been as specially emphasising his overlordship of the Sicilian kingdom. It is also one of the comparatively few occasions when he speaks of his holding the empire "Dei et sui (*i.e.*, the Pope's) gratia."

[1] Henry is styled "rex Sicilie et dux Suevie" on the 13th February 1217, Reg. Im. v. 1. 3846e; l.c., 3846g 3rd January 1218 the title of King of Sicily is not given, and in 3846h of 10th September 1218 Henry is only styled Duke of Swabia.

[2] Winkelmann, 'Acta Imperii,' vol. i. 180, 13th July 1220. Letter of Frederick to the Pope. "Quamquam per vestras non receperimus litteras, plurim[or]um tamen intelleximus ex relatu, quod ecclesia mater nostra super promotione charissimi filii nostri non modicum sit turbata, eo quod de ipso iam dudum in gremium suum posito et totaliter mancipato super hoc ampliorem curam et solicitudinem spopondimus minime habituros nec post promotionem eiusdem aliquod significavimus apostolice sanctitati, et quod etiam adventum nostrum beatitudini vestre toties nuntiatum convincimur usque adeo distulisse; super quibus sanctitati vestre veritatis seriem duximus explicandam. In conspectu namque clememtie vestre inficiari nec possumus nec debemus, quin erga promotionem unici filii nostri, tamquam qui ipsum paternis affectibus non possumus non amare, laboraverimus hactenus iuxta posse, quod equidem nequivimus obtinere."

He proceeds to give an account of the circumstances under which the election took place, and the causes of the delay in announcing it to the Pope.

chancellor for his part wrote Honorius, he had heard from a cardinal that the Pope had declared the election of a German king did not concern him.[1] The letters are written from different points of view, but they are not irreconcilable, and it seems unlikely they were meant to deceive the Pope, who must have been kept fully informed of what had taken place by his envoy Alatrin, who was at the time in Germany. The statement attributed to Honorius was no doubt made by him, but probably only meant that the Pope was not concerned till the time came when he had to decide whether the Teutonic king was fit to be emperor. The curia was not satisfied with the explanations offered, and very shortly before Frederick's coronation the papal envoys, who were negotiating on the conditions to be fulfilled in connection with Frederick's coronation, were directed to inform Frederick that the election was inconsistent with his promises.[2] He was obliged shortly before, and again shortly after, his coronation to declare that the Sicilian kingdom was his entirely as heir to his mother (not to his father), and that it was quite independent of the empire. He also acknowledged that he and his predecessors held it from the Roman Church.[3] Though the curia had to accept these declarations, and acquiesced in Frederick's retention of the Sicilian kingdom, it does not seem ever formally to have acknowledged Henry as King of the Romans. On the few occasions when he is mentioned in papal correspondence, it is as son of the emperor, and in a letter of Gregory's in 1235 calling on the German magnates to support Frederick against his rebellious son, Henry is called merely "vir nobilis."[4]

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[1] Epis. Sae. XIII., vol. i. 127, p. 93, l. 18 f. Conrad to Honorius. "Verumtamen, pater et domine, diu ante electionem illam, si memor esse dignatur vestra benignitas, consului circumspectionem apostolicam super huius electionis celebratione. Sed cum non meruissem apostolicum inde habere responsum, per unum de fratribus dominis meis cardinalibus specialissimum meum fui instructus, vos dixisse nichil ad vos de electione Romanorum regis pertinere."

[2] L.c., 144, 10th October 1220.

[3] M. G. H., 'Const.,' II. 84, November 1220, and 87, December 1220.

[4] As late as the 6th March 1220 Henry was still styled King of Sicily by the curia, *vide* Epis. Sae. XIII., vol. i. 110. In later letters he is referred to as the son of Frederick, l.c. 133, 136, 327, p. 247, l. 15; 330,

Frederick had achieved a diplomatic triumph over the Church, but it was at a great cost, as it increased the importance long attached by the Church to securing for itself supporters in Northern Italy, and this could only be done in the long-run at the cost of a conflict with the empire.

Even before Frederick had succeeded in securing the permanent retention of his Sicilian kingdom, the curia had shown the importance it attached to Lombard affairs. It was impossible for Frederick, so long as he had a rival in Germany, to do much in the way of re-establishing imperial rights in Italy, but six months after Otto's death we find his imperial vicar, the Bishop of Turin, requiring Cremona and Parma, imperialist cities, to accept his decision in disputes with other Italian cities.[1] The papal legate in Lombardy, Hugo, the future Pope Gregory IX., at once intervened, and compelled these cities to accept his mediation between them and Milan; Cremona, at all events, doing so very unwillingly. He also put great pressure on Frederick to allow this. Hugo, in addressing the people of Cremona, dwelt on the excellent work it had done in resisting the rebellious Milan, which had continued to support Otto even after he had become the Pope's enemy, but in the end he treated both parties exactly alike, directing them to make peace on equal terms.[2] We have

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p. 250, l. 28, &c. In some letters he is referred to as "nobilis vir," l.c. 537, p. 435; 603, p. 490, ll. 5 and 6; 631, 651, 659.

For Henry's titles in Germany, see H.-B., vol. ii. p. 719. Before the imperial coronation Henry is "electus." In 722 and all later letters the "electus" is dropped.

Henry was not crowned till the 8th of May 1222. It has been suggested that the proceedings in 1220 were merely a nomination, but this seems inconsistent with the fact that after Frederick's coronation in 1220 as emperor Henry is styled "rex Romanorum," not merely "electus."

[1] Böehmer, 'Acta Imperii,' 938, 3rd, 5th October 1218.

[2] Böehmer, 'Acta Imperii,' 939, 30th October 1218. This document contains the report by a notary of a speech made by the legate at Cremona. Among other things, he said: "Et rogamus vos, ut in nobis et ecclesia Romana debeatis vos ponere secure, quia non debetis credere, quod ecclesia velit vos pericula et sanguinem fusum et expensas pro ecclesia factas amittere, quia spero in deo nos de hoc negotio ad honorem Romane ecclesie et domini regis et ad magnum statum Cremone procedere."

L.c., 940, 31st October 1218. The oath is taken by the podesta of Cremona "salva in omnibus capitulis et per omnia fidelitate salvoque honore serenissimi domini Frederici Romanorum regis."

noticed the action of the legate in this case, as it foreshadows what happened in later quarrels between Frederick and the League—namely, constant pressure on the empire to accept papal mediation, and great leniency shown to its enemies.

Immediately after Frederick had obtained his last postponement of the crusade to August 1227, he gave notice of a meeting to be held at Cremona at Easter 1226, with the object of restoring peace, of extirpating heresy, and of making arrangements for the crusade.[1] The prospect of the arrival of the emperor in Lombardy with large forces, not only from his Sicilian kingdom but also from Germany, was very unpalatable to Milan and many of the other cities of Northern Italy, not only because it would enable Frederick to recover imperial rights usurped by the cities during the troubled years that succeeded the death of Henry VI., but also because heresy was very widely spread, and to some extent favoured by the governments of the city states. The result was that the

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L.c., 941, November 1218. Hugo wrote Frederick he had been sent by the Pope to allay the quarrels in Lombardy, and had visited Cremona, where the people "nobis vehementissime suplicarunt, ut vestram modis omnibus deberemus presentiam expectare," as they had been instructed "ut in facto pacis iuxta vestrum procederent beneplacitum et mandatum." The legate was, however, afraid "ne propter hoc honoris vestri consumatio pateretur quomodolibet lesionem. In iacturam quoque ecclesie Romane, vestram et ipsorum plurium redundasset, si pars adversa ecclesie beneplacitis paruisset, et Cremonenses, qui per mandatum sedis apostolice speciale pro honore vestro huiuscemodi se discordiis miscuerunt, invenirentur aliquantulum pertinaces. Unde vehementer institimus apud ipsos, ut omnimodo mandatis summi pontificis obedirent, asserentes eisdem, quod ecclesia Romana, cum debet disponente domino dirigere gressus vestros ac honorem vestre magnificentie consumare, hoc in culmen vestri honoris et ecclesie procurabat, quod non tam precibus nostris victi vel ob sedis apostolice reverentiam excitati, quam moti pro facto vestro, cuius per hoc utilitas . . . procuratur, et timentes ne, si secus egissent, status vester in aliquo lederetur, scientes etiam, quod nos affectione speciali ad glorie vestre culmen dantes studium diligens et operam efficacem in nullo prorsus laborare velemus, quod vestre deberet celsitudini displicere," and he exhorts Frederick to assure the people of Cremona "quod ratum et gratum habetis, quod factum est auctoritate sedis apostolice et quod in antea pro bono pacis extiterit ordinatum."

L.c., 942, 2nd December 1218, contains the legate's orders regarding the terms of peace.

[1] M. G. H., 'Const.,' ii. 107, 12th July 1226.

Lombard League was renewed[1] on the 8th March 1226, and was joined in April 1226 by Verona[2]; this enabled the League to close the passes to the German troops. Frederick attempted at first to negotiate, but the terms proposed by the Lombards appeared to the Germans so exorbitant that the bishops in Frederick's camp declared that the Lombards had laid themselves open to ecclesiastical censure, under the terms of papal letters providing that disturbers of the imperial rights and honours might be so dealt with.[3] Terms of peace were, however, at last accepted by both parties, but finally rejected—we do not know why—by the Lombards, whereupon Frederick pronounced the ban of the empire upon them.[4] This had no effect, and as a crusade in 1227 would have been difficult with a hostile Lombardy in arms against him, Frederick had to ask the Pope's help in settling the dispute.

As we have already mentioned, there had been much friction between the Pope and the emperor while Frederick was on his way to Cremona, both with regard to Frederick's demands for armed assistance from papal subjects, and the filling up by the Pope of vacancies in Sicilian bishoprics. Frederick had to drop his quarrel with the Pope, and Honorius, who eagerly looked forward to a great crusade under the emperor, accepted Frederick's request to restore peace.[5] He gave his award in January 1227.[6]

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[1] H.-B., vol. ii. p. 924. Account of the renewal of Lombard League. The formation of the League is justified "si come il tenore de la pace a Constantia celebrata fa mentione. . . . Non e anche de pretermettere come lo excelso sopra tutte le gente Federico secondo, al presente imperante . . . simile concessione habia confirmata, sicome appare per li privilegii suoi."

[2] L.c., p. 928.

[3] M. G. H., 'Const.,' ii. 105, 10th June 1226.

[4] L.c., 107. Encyclical regarding ban on the Lombards, 12th July 1226.

[5] Frederick's letter is of 29th August 1226 (see H.-B., vol. ii. p. 676). In September or the beginning of October Honorius asked the "rectors" of the Lombard League to send representatives to receive the Pope's orders regarding the settlement of their dispute with Frederick (Epis. Sae. XIII., vol. i. 309).

[6] L.c., 328, 5th January 1227. Form of letter to be given by the Lombards to the emperor. The body of the letter commences by a reference to the four hundred "milites" to be provided at the expense of the Lombards for the crusade, and further on it is written: "Supradicti vero quadringenti milites teneantur ire in vestro passagio, quod a vobis statutum est et a Romana ecclesia approbatum." L.c., 330, prescribes the form of letter to be written by Frederick.

Under the terms of this award, both sides were to withdraw all hostile orders issued and to restore all prisoners taken while hostilities were going on. The Lombard members of the League were required to rescind all laws in contravention of ecclesiastical liberty, and to observe all ecclesiastical and imperial laws concerning heresy. They were also to provide at their own expense 400 "milites" to assist the emperor in his crusade.[1] A letter from the Pope to the League informed them that this last provision was not binding should the emperor fail to start, unless he was specially exempted by the Pope from doing so.[2] The effect, so far as the empire was concerned, was merely to restore the *status quo ante*, while there were important gains to the Church. The award did not, however, deal with the questions at issue between the emperor and the League, so that it was still open to the emperor to revive his claims at a more convenient time and without reference to the Pope.

Frederick at once accepted the award, but the Lombards raised frivolous difficulties, and had not signed the agreement when the Pope died.[3]

During the pontificate of Honorius, Frederick had by very considerable concessions to the German princes, ecclesiastical and secular, secured peace in Germany so far as to enable him to devote his attention to Sicily, where he set about establishing a centralised and powerful government. By 1226 he apparently considered himself strong enough to extend his authority over Lombardy. His first attempt was a complete failure owing to the stubborn opposition of the League, and he was thus obliged to accept the Pope's restoration of the *status quo ante* for the time being.

The net result of events during the pontificate of Honorius was to bring about a critical state of relations between the Papacy and the empire. Frederick had maintained the personal union of Sicily and the empire. At Vercelli in 1222, and again in a more serious form in 1226, he had showed his desire to modify the territorial arrangements agreed to at

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[1] See note 6, p. 242.

[2] L.c., 331.

[3] Honorius died on the 17th March 1227. The Lombards finally accepted the orders of the Pope (M. G. H., 'Const.,' ii. 114, 26th March 1227).

Eger, and in the 1226 correspondence he had disclosed his real feelings towards the Papacy. In 1218, and again in 1226, the Church had shown that it would do its best to prevent any serious weakening of the anti-imperial cities in Lombardy. This was a matter on which neither side could give way, and it was to play a very large part in the final struggle between Frederick II. and the successors of Honorius. Finally, by his constant postponements of the crusade, whether justified or not, and by his pledge in 1225, Frederick had laid himself open to attack by the Church, on grounds very disadvantageous to himself.

Honorius died on the 17th March 1227, and was succeeded on the 19th by Gregory IX., who was a relation of Innocent III. With Gregory a very different régime begins, for he was not like his predecessor—willing to shut his eyes temporarily to matters which might be a cause of offence. Gregory was the Cardinal Hugo who, as papal legate, had unwillingly started for Germany to arrange terms of peace with Philip of Swabia, and who again as papal legate had forced the people of Cremona to accept him as arbiter. Within a week of his election he had written Frederick a letter quite friendly in tone, but ending with a serious warning of the results if he did not start on his crusade by the time fixed.[1] Gregory also wrote the rectors of the Lombard League to send the forms of agreement prepared by the papal office, and to do it quickly, so that Frederick might not become aware of their delay nor of the constant reminders sent to them by the Apostolic See.[2]

The time of Frederick's departure for Palestine had been settled for August 1227, and Brindisi was the port of departure. Large numbers were attracted by Frederick's offers of free transport to those desirous to take part in the crusades, and a serious epidemic broke out among the crowds waiting to embark. The emperor's account of what happened up to the time of his excommunication is that he fell ill, but notwithstanding went to Brindisi, and the arrangements for departure were pressed on. Finally he made a start, accompanied by the Landgrave of Thuringia and many other German princes, on the 9th September. Two days later he landed again at Otranto, where he lay ill, while the Landgrave died shortly after landing. On the advice of his princes the expedition went on to Palestine, while he postponed his own departure till the following May. Envoys were sent to Gregory to explain what had happened, but the Pope would not even receive them, and on the 29th September he pronounced him to have incurred the penalty of excommunication under the terms of his oath given at San Germano in 1225.[1]

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[1] Epis. Sae. XIII., vol. i. 343 (p. 262, l. 21 f.), 23rd March 1227. "Tu ergo, fili karissime, ad illum, qui dominatur in regno hominum . . . debitum habens cum devotione respectum, sic precibus et monitis nostris obtempera, quod nequaquam nos et te ipsum in illam necessitatem inducas, de qua forsan te de facili non poterimus, etiamsi voluerimus, expedire."

[2] L.c., 345, 27th March 1227.

In his encyclical issued a few days later, Gregory sums up Frederick's shortcomings, which were aggravated by the fact that he was protected during his minority by the Church, to which he also owed his promotion first to king (of the Romans) and finally to emperor. He gave as the specific grounds of excommunication not only his failure on frivolous pleas to start at the time fixed, but also his failure to provide the stipulated military forces and the money payments required. He taxed him with not providing enough transports, and with fixing the rendezvous at the height of summer in an unhealthy climate, Brindisi having been selected by Frederick, as he had fallen out with other cities with ports. He made him responsible in the past for the loss of Damietta, and the rejection of the Moslem offer to give up the Holy Land in exchange for that city. Frederick had also offended in many ways against clerics and laymen, but the Church had ignored the cries of the sufferers, lest it should give Frederick some excuse for postponing his departure.[2] This last complaint evidently refers to the Sicilian kingdom, for in a letter to

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[1] See Frederick's account in his encyclical regarding his excommunication (M. G. H., 'Const.,' ii. 116).

[2] Epis. Sae. XIII., vol. i. 368, 10th October 1227. Gregory writes of the great enemies of the Church, pagans,

Frederick in the end of October he called on him to mend his ways in the kingdom (*i.e.*, the Sicilian kingdom), both in his treatment of rebels whose agreements with him had been guaranteed by the Church, and also in his conduct to ecclesiastics and laymen, a matter of special concern to the Church,

tyrants whose rage "exterminat iustitiam et conculcat ecclesiasticam libertatem," heretics, "falsorum fratrum et filiorum dolosa perversitas." To deal with them the Church "quendam nutrivit alumnum, imperatorem videlicet Fridericum, quem quasi a matris utero excepit genibus . . . educare studuit multis laboribus et expensis, usque ad virum perfectum deduxit, ad regie dignitatis decorem et tandem ad fastigium culminis imperialis provenit, credens ipsum fore defensionis virgam et sue baculum senectutis." He tells of Frederick's taking the cross of his own motion, without the knowledge of the Holy See, of his constant postponements, and of the final agreement at San Germano, where Frederick (p. 283, l. 17) "in animam suam iurari faciens se ista que prediximus impleturum, et sponte consentiens in ipsum et regnum suum ferri sententiam, si hec non fuerint observata." He contrasts what Frederick actually did, with these stipulations "cum ad eius frequentem instantiam multa crucesignatorum millia per excommunicationis sententiam coarctata in termino destinato ad portum Brundusii properassent, quia gratiam suam imperator subtraxerat civitatibus fere omnibus in portubus constitutis, idem a predecessore nostro ac nobis frequentius monitus, ut diligenter pararet omnia et fideliter que spoponderat adimpleret, ipse omnium promissorum, que apostolice sedi et crucesignatis . . . immemor, tamdiu in estivi fervoris incendio in regione mortis et æris corruptela detinuit excercitum Christianum, quod non solum magna parsplebis, verum etiam non modicai multdudo nobilium et magnatum pestilentia, sitis ariditate, ardoris incendio ac multis incommoditatibus expiravit." Even for those that were left sufficient ships had not been provided, and a start was made too late, the crusaders expecting Frederick to follow. He, however, "in suum et totius Christianitatis opprobrium retrorsum abiit, attractus et illectus ad consuetas delicias regni sui, abiectionem cordis sui frivolis excusationibus, ut dicitur gestiens palliare. Attendite et videte, si est dolor sicut dolor apostolice sedis, matris vestre, sic crudeliter et toties decepte a filio . . . dissimulans interim, ne occasione inventa se averteret a Terre Sancte subsidio, exilia presulum, spoliationes, captivitates et iniurias multiplices, quas ecclesiis et religiosis et clericis irrogavit, et obaudiens querelas multiplices pauperum popularium et nobilium patrimonii ecclesie clamantium contra ipsuum. . . ." He deplores the fate of the expedition without a leader, and harks back to the loss of the Holy Land, "quam olim, ut asseritur, recuperasset exercitus Christianus per concambium Damiate, nisi ei (*i.e.*, the army in Egypt) semel et iterum imperialibus fuisset litteris interdictum."

The grounds he gives for excommunication are "qui (*i.e.*, Frederick) nec transfretavit in termino, nec illuc in taxatis passagiis prescriptam pecuniam destinavit, nec duxit mille milites per biennium tenendos ibidem ad suum pro subsidio Terre Sancte, sed in his tribus articulis manifeste deficiens, in excommunicationis descripte laqueum ultroneus se ingessit." More serious action would follow if he proved contumacious.

and he ended with a threat if Frederick did not mend his ways. In this letter Gregory dwells on the leniency with which Frederick has been treated, as his excommunication was merely the putting into effect of Frederick's own agreement two years before.[1] A little later, on the 18th November, Gregory held a council of Italian bishops in Rome, and announced for the second time Frederick's excommunication.[2] According to Frederick his envoys were admitted to this council, but not until the matter had been practically settled.[3]

Frederick now at last published his defence; unwillingly, as he professes, but forced into it by the Pope. In his answer he dealt with the specific complaints made by the Pope in his encyclical. Instead of owing gratitude to the Papacy, it had placed him in great peril in his minority, and his kingdom had suffered serious injury during the papal guardianship. He, on the other hand, had done great service to the Church when Otto turned on it, and no one else was forthcoming to govern the empire to which he himself had been elected by the princes.[4] The loss of Damietta was due to the papal legate, and he was not responsible for the rejection of the Moslem offer to exchange it for Palestine. As regards the crusade, he had supplied the full number of knights and all the money required, but he had been compelled by illness to postpone his departure. All this his envoys could have explained, but they were not listened to. As regards Brindisi, it was the usual port of embarkation, and he had personally suffered from the effects of the epidemic. Frederick ended his encyclical by the announcement that he would start for the Holy Land in May.[1]

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[1] Epis. Sae. XIII., vol. i. 370 (p. 287, l. 2 f.). "Ideoque imperialem mansuetudinem rogamus . . . ad solvenda varia vincula, quibus teneris astrictus, instanter intendas, et ad gremium matris ecclesie te desiderabiliter expectantis cum omni celeritate festines, satisfaciendo Deo, qui tibi utique satis fecit, et homnibus iustitiam exhibendo. Sicut enim scire te credimus, contra nos murmuratur imo clamatur, quod prelatorum exilium, ecclesiarum . . . spoliationes et alias atroces iniurias visi sumus hactenus sub dissimulatione transire." Gregory mentions several cases, and proceeds, "Preterea cum regnum Sicilie pleno proprietatis iure ad Romanam spectaet ecclesiam, non solum calamitatibus oppressorum compassionis affectu confodimur, gementium quod illos in eis sustinemus impie servitutis abusus, quos vix debemus in regnis aliis comportare, set confundimur a vocibus exprobrantium et obloquentium, quod tales afflictiones in hiis, qui ad sedem apostolicam te mediante pertinent, toleramus quales ipse in hiis qui ad te spectant aliquo medio nullatenus tolerares, cum intersit nostra potissime beneficio consolationis adesse quibuslibet tribulatis. Quare nec illorum penas nec tuas culpas possumus ulterius salva conscientia comportare, presertim cum super hiis iam monitus fueris diligenter." If Frederick does not put these matters right, "nequaquam dissimulare poterimus, quin secundum Deum et iustitiam procedamus."

The end of October seems the most probable date for this letter. See Winkelmann, 'Kaiser Friedrich II.,' vol. i. p. 336, note 2.

[2] 'Rycardus di San Germano,' p. 127.

[3] M. G. H., 'Const.,' ii. 116, pp. 153-4 (15) and (16).

[4] Apparently the reference is to his election in 1196.

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[1] L.c., 116, 6th December 1227. "In admirationem vertitur vehementer, quod unde pro multis beneficiis prestolabamur gratiam, inde tam offensionis quam contumelie diversa genera reportamus. Inviti loquimur, set tacere nequimus, quod in eo quod diu tacuimus spes, que multos decipit, nos decepit. . . . Audiat igitur et intelligat orbis terre, quod provocati trahimur scripturis et nuntiis dudum nostre matris ecclesie, nunc in filium novercantis, quos contra nos ubique terrarum, sicut accepimus, destinavit." With regard to his succession to the empire, he writes how Otto "in ipsum tutorem nostrum, per quem coronatus fuerat, nequiter conspiravit," so that "tunc verius quam nunc ab existentibus in navicula Petri tantis tempestatibus agitata clamari poterat: 'Domine salve nos, perimus.' Cumque non inveniretur alius, qui oblatam imperii dignitatem contra nos et nostram iusticiam vellet assumere et periclitanti navicule de portus solatio providere, vocantibus nos principibus, ex quorum electione nobis corona imperii debebatur, tunc dormiens in puppe Dominus discipulorum clamoribus excitatus per nos derelictum, quem mirabiliter preter humanam conscientiam conservarat, deiciendo superbum et humilem exaltando . . . naviculam non solum liberavit a fluctibus, set in tutiori et altiori specula mirabiliter collocavit. . . ." Frederick deals with the negotiations regarding postponements of the crusade, the San Germano agreement, and the arrangements for the start. As regards the place (p. 152, l. 20), "ad loca passagii non a nobis sed ab antiquis temporibus ordinata." Notwithstanding illness, he pushed on the arrangements, and there were more ships than were wanted for the pilgrims. As regards the "corruptela vero æris . . . nulli magis quam nobis molestum extitit et damposum. Nam in propria persona sensimus" He started, but had to return because of a severe relapse. He consulted the princes and other illustrious persons present, and was advised, after they had considered the state of his health and other circumstances, not to start. The Pope would not even receive his envoys, and (p. 153, l. 27) "denuntiavit in nos pro eisdem tribus capitulis, in quibus, cum defectus non sit, defectum, quia sic placet, allegat:" He gives the grounds alleged by Gregory, and states that his envoys were prepared at the council held at Rome on the 18th November to show that he had sent more than the number of "milites" required, and that there was no real default as regards the money he was to provide, but his envoys were not given a proper hearing, and the excommunication was repeated.

Frederick also showed his determination not to submit by proceeding with his preparations to start in May, and by giving orders that any of the clergy refusing to celebrate "divine office" in his presence were at liberty to do so, but would forfeit any temporal possessions conferred by his predecessors (per divos augustos progenitores nostros).[1]

On Maundy Thursday in 1228 Gregory repeated the publication of the emperor's excommunication. In his encyclical announcing it, he added to his previous grounds of excommunication others connected with Frederick's conduct in Sicily. From his letter it appears that Frederick's failure in connection with the crusade was only one of many other matters for which Frederick was punished, and that negotiations with Frederick had broken down because he would not give way regarding matters connected with his administration of Sicily. Gregory increased the severity of the previous order by an interdict on any place where Frederick might happen to be staying. His answer to Frederick's order to the clergy regarding divine service was a threat to proceed against him as a heretic. He also threatened to release his subjects from their oath of fidelity, and to deprive him of his fief if he did not cease from oppressing the people of his kingdom.[2]

Frederick asks (p. 155, l. 12 f.) that "Presentes vero litteras ob reverentiam nostram publice perlegi facias et audiri, quod ex earum tenore cunctis pateat nostre innocentie certitudo et iniuria, que nobis et imperio infertur."

[1] H.-B., vol. iii. 51, end of 1227. Frederick to his justiciars.

[2] Epis. Sae. XIII., vol. i. 371, p. 289, end of March 1228. Gregory to all the prelates of Apulia. Gregory had sent envoys to Frederick, but they had been unable to bring him to repentance. Accordingly "in proximo preterito festo cene Dominice" he excommunicated him "tum pro eo quod, ut premissum est, non transfretavit in subsidium Terre Sancte, nec promissum numerum militum in expensis suis tenuit vel transmisit, nec pecuniam quam promiserat destinavit, tum quia venerabilem fratrem nostrum Tarentinum archiepiscopum ad sedem propriam accedere non permittens, eum populum suum non patitur visitare, tum etiam quia Templarios, Hospitalarios bonis mobilibus et immobilibus, que habebant in regno temere spoliavit, et quia (he broke) compositionem factam inter ipsum et comitem Celanensem . . ." guaranteed by the Church of Rome at his request, "et quia comitem Rogerium crucesignatum sub apostolice sedis protectione receptum, comitatu et aliis terris indebite spoliavit. . . ." He threatens, "si non cessaverit ab oppressione pupillorum, orphanorum

Before starting for Palestine, Frederick issued an encyclical in which he informed the world that, notwithstanding his innocence, he had sent the Pope a statement of the satisfaction he was prepared to give for not starting at the time fixed, but the Pope would neither accept what he offered nor state what he would accept. He also complained that the Pope had enrolled soldiers to attack him.[1]

It appears to have been Gregory's determination to get a settlement of the Sicilian questions that made the breach inevitable. The whole basis of Frederick's policy was a strong centralised government in Sicily, and we shall find hereafter that, however willing he might be to make concessions, whether honestly intended or not, in other matters, he would not allow his authority in his kingdom to be seriously weakened.

Frederick started for Palestine seriously hampered by the papal excommunication and interdict, not only in his relations to the Church and to the great military orders in Palestine, but also in his negotiations with El Kamel, the Sultan of Babylonia (*i.e.*, of Egypt), who was well aware of the quarrel between the Pope and the emperor.

Frederick had not a military force sufficient to conquer the Saracens, but notwithstanding he succeeded in negotiating a treaty by which the Sultan surrendered to him Jerusalem and some of the other holy places, such as Bethlehem and Nazareth. The treaty contained several provisions very distasteful to the Christians. Among others the Saracens were allowed to retain the Mosque of Omar, and for the ten years to which the truce extended Frederick was not to attack the Saracens, and was to oppose, if necessary by force, any attack on them. The territories of Tripoli and Antioch were not included in the truce, and while it lasted the emperor was not to assist the rulers of these lands against the Saracens,

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et viduarum seu nobilium et aliorum hominum regni vel eius destructione, quod ad Romanam ecclesiam specialiter noscitur pertinere . . . merito poterit formidare se iure feudi privandum."

[1] M. G. H., 'Const. II.,' vol. ii. 119, end of June.

nor permit others to do so. Taken as a whole, however, the Christians gained more than in any, save the first, crusade. Frederick and the Grandmaster of the Teutonic Order represented it to the Pope as a great success, while Gerold, the Patriarch of Jerusalem, reported it to the Pope only to pick holes in what had been done.[1] Gregory, in a letter to the Duke of Austria, went so far as to declare that by undertaking not to take up arms against the Saracens, Frederick had really abdicated as emperor, inasmuch as he was bound in virtue of his office to wage war against the enemies of the faith.[2]

The treaty was concluded on the 18th February 1229.

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[1] See for text of a portion of the treaty and the letters of the Grandmaster of the Teutonic Order and of the emperor to the Pope, l.c., 120, February or March 1229 treaty; 121, letter of Grandmaster, 7th-17th March 1229; 122, encyclical of emperor, 18th March 1229. For patriarchs' criticisms of treaty, see Epis. Sae. XIII., vol. i. 380, 18th February 1229, and 384, 26th March 1229. For the Pope's criticism, see 397 of 18th July 1229.

[2] L.c., 397, 18th July 1229. Gregory to the Duke of Austria. The letter is a copy of an encyclical to kings and other temporal rulers and to prelates of the Church. Gregory enumerates the crimes committed by Frederick in executing the treaty. "Primum quod arma Christiane militie, gladii potestatem de altari beati Petri sumpti, ad vindictam malefactorum laudemque bonorum sibi a Christo per suum vicarium assignati, quo pacem Christi, fidem ecclesie defenderet et muniret, soldano Babilonie, . . . impudentissime resignavit, denuntians ei ut de ipso faceret quicquid vellet, et affirmans se nolle arma de cetero assumere contra ipsum, quem ut impugnatorem fidei fideliter impugnaret, acceperat imperialis culminis dignitatem. Per quod patenter arguitur, quod dignitati imperii eiusque spotaneus renuntiavit honori, cum executionem gladii contra hostes fidei pacto execrabili et inaudita presumptione remittens, potestatis et dignitatis sue se spoliavit officio, causa se privatum insinuans, cuius effectu promisit et iuravit se de cetero cariturum; privilegium enim meruit dignitatis ammittere, qui concessa sibi abusus est potestate." He goes on to deal with other defects in the treaty, which he declares show him to be guilty "lese maiestatis."

From a letter to the Patriarch of Constantinople in 1232, it appears that Gregory had adopted the theory that both swords belonged to the Pope, who delegated the sword of temporal power to the secular authorities, and the passage above, relating to the sword of power, should therefore apparently be interpreted in this sense. (Raynaldus, 'Annales Ecclesiastici,' 26th July 1232, p. 75.) "Nunc igitur, quia in aliis literis, quas dudum tibi remisimus, latius hanc, et alias auctoritatum, et rationum, quæ pro Rom. primatu Ecclesiæ faciunt, materias explicamus, illud tantum adiicimus, quod utrumque gladium ad Romanum pertinere Pontificem ex evangelica lectione tenemus."

Frederick left Palestine on the 1st May, and landed in Brindisi on the 10th June. Here active hostilities were in progress between the Pope and Frederick's representative, Reynold of Spoleto. Before leaving for the Holy Land, Frederick had appointed Reynold of Urslingen his legate and vicar of the kingdom of Sicily. He also made over to him two documents, one appointing him his legate in the March of Ancona, the lands of the Countess Matilda, the "Vallis," "Lacus," and the "Maritima," the other withdrawing grants which he had made voluntarily to the Church (*i.e.*, at Eger).[1] Frederick after his arrival in Palestine made a fresh attempt at a reconciliation with the Pope, and named Reynold as his representative in any negotiations that might ensue.[1] It is very unlikely that he would have done this had he not intended Reynold only to act on these documents in the case of an attack by the Pope.[2]

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[1] For the appointment of Reynold as imperial legate in the March of Ancona and in the lands of the Countess Mathilda, see M. G. H., 'Const.,' vol. ii. 117, June 1228. For the revocation of grants to the Church, see l.c., 118, 21st June 1228.

In the second letter he writes: "Novit Altissimus, de cuius munere imperiali solio presidemus, quod ob reverentiam Dei . . . Romanam ecclesiam affectu filiali semper dileximus et iuravimus totis viribus honorare, adeo quod metas imperii, cuius terminos amplificare tenemur, sponte reliquimus, ut ecclesiam largioribus beneficiis ditaremus, eidem vos et plures alios de fidelibus nostri imperii concedendo, sperantes quod exinde placeremus Altissimo et ipsius rectores ecclesie fierent huiusmodi nostri beneficii non ingrati. Sic etiam in utilitatem ecclesie ipsius nostrum beneficium concessimus, ut sub nostre protectionis umbraculo essetis . . . et vos semper haberemus, cum expediret, ad nostra et imperii servitia preparatos, quos ex concessione huiusmodi a iurisdictione et servitiis imperii nunquam fieri volumus alienatos." The Church has abused the gift "reverentiam et servitium, quod a vobis ceterisque fidelibus nostri imperii celsitudini nostre debetur, impedire conati sunt, ut nobis non velut Romanorum imperatori et vero domino vestro, sed tanquam extraneo per imperium nostrum et per vos maxime, quos reputamus esse imperii fideles precipuos, transitum simpliciter prebere, licet id numquam implere vel exequi potuissent, vobis et ceteris fidelibus nostri imperii contradicentibus. . . ." For these and other reasons connected with the misdeeds of the rulers of the Church, "concessionem nostram predictam factam ipsi Romane ecclesie de vobis merito duximus revocandam," and they were always in future to remain under the empire "quod nunquam vos amplius a nostro et imperii dominio subtrahemus."

It will be observed that Frederick's claim never to have abandoned imperial rights over the lands ceded to the Church seems inconsistent with the terms of the cession. All that he reserved for himself was "cum ad recipiendam coronam imperii vel pro necessitatibus ecclesie ab apostolica sede vocati venerimus, de mandato summi pontificis recipiemus procurationes sive fodrum ab ipsis" (M. G. H., 'Const.,' vol. ii. 48). Attempts made by Frederick to go beyond this had been resisted by the Roman Church.

Gregory at the end of July at Perugia released Frederick's subjects, and specially those of his kingdom of Sicily, from their oath of fidelity.[3] Reynold, who had personal reasons for desiring to recover Spoleto from the Church, chose to take this as a sufficient justification for an attack on the Church. He began by invading the Duchy of Spoleto; later on he also attacked the March of Ancona. An appeal by the Pope to Reynold proved ineffectual,[4] and Gregory took measures not only to recover the papal territories, but also to carry the war into the Sicilian kingdom. In order to defend the Church, Gregory demanded from clergy of various states, tithes, and he asked temporal rulers to assist him. Later on, after Frederick's return, he went so far as to demand military assistance from the clergy.[5]

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[1] That Frederick referred the Pope to Reynold as his representative in the negotiations he endeavoured to start after his arrival at Acre appears from Epis. Sae. XIII., vol. i. 376, p. 294, l. 7 (Gregory to the people of Genoa, 30th November 1228. See also note 2 on p. 294.)

[2] Whatever Frederick's intentions may have been Gregory could of course only deal with the overt actions of the emperor or of his agents.

[3] L.c., 399. Fresh excommunication of Frederick, and excommunication of Reynold of Spoleto and others by Gregory about the 20th August 1229. The grounds of excommunication include not only Frederick's shortcomings regarding the crusade, but his behaviour in Sicily, "quod ad Romanam ecclesiam specialiter noscitur pertinere" (p. 319, l. 10).

[4] L.c., 375, 7th November 1328.

[5] See Winkelmann, 'Kaiser Friedrich II.,' vol. ii. p. 41, note 2. Regarding Gregory's demand for tithes, Wendover gives an account of Stephen's (the Pope's chaplain) visit to England, and of the refusal of the laity at a Parliament, held in April 1229, to give tithes. The clergy, according to Wendover, agreed very unwillingly for fear of excommunication. Matthew Paris, vol. iii. p. 186 f.

For an instance of Gregory's appeals to rulers, see Epis. Sae. XIII., vol. i. 378, of 21st December 1228, to the King of Sweden. In this letter he says the Roman Church is furnishing three armies, and requires help in money.

Besides demands for pecuniary help, a few months later Gregory called on bishops to send armed support. *E.g.*, his letter of 30th September 1229, l.c., 404, to the Bishop of Paris, in which "monemus et hortamur attente, per apostolica scripta in virtute obedientie et sub debito iuramenti districte precipiendo mandantes, ac

Gregory was at first very successful, and by the time Frederick had returned from Palestine a great part of the mainland was either occupied by papal troops or in open revolt. The whole situation changed on Frederick's arrival, and by the beginning of October he had recovered all the territories, belonging to the kingdom, he had lost. So far, however, from attempting to make use of his victory to recover any of the lands lost to the empire at Eger, Frederick pressed peace negotiations on the curia. These negotiations dragged on until, in February 1230, Frederick invited some of the German princes to mediate between him and the Pope. After long-protracted discussions he received absolution on the 28th August. The terms of the peace appeared on the surface a great victory for the Pope.[1] Frederick, though the victor so far as the war was concerned, had to give up all the papal lands occupied by his troops, and to repay any expenses incurred by the Pope in defending them; he had also to agree that the civil courts should have no jurisdiction over the Sicilian clergy saving in feudal matters. The clergy were to be exempt from taxation. These concessions were of some importance, but, as was proved by results, they did not suffice to weaken Frederick's hold over the kingdom.

The Lombard League had sent troops to assist the Pope,[2] and Frederick was obliged, among the other conditions of

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in remissionem peccaminum, tam tuorum quam eorum qui in obsequium ecclesie venerint, iniungentes . . . ad nos personaliter venire cum congruo exfortio bellatorum vel mittere sine dispendio more procures." In the case of the Archbishop of Lyons, l.c., 403, the Pope went further, threatening him with excommunication if he did not obey his orders.

[1] The terms of the agreement are embodied in a number of documents (M. G. H., 'Const,' vol. ii. 126-149, July to October 1230). As regards the taxation of clerics, Frederick gave orders in 137, "quatinus nullus sit qui deinceps tallias seu collectas imponat ecclesiis, monasteriis, clericis seu personis ecclesiasticis vel rebus eorum, salvis debitis servitiis ad que certe ecclesie ac persone nobis noscuntur esse specialiter obligate."

[2] Epis. Sae. XIII., vol. i. 395, 26th June 1229. In his letter to the Lombard League, calling on them to send their promised military assistance, Gregory urges that it is owing to their importunity that he has taken action against Frederick. "Scitis . . . nos ex summo desiderio et deliberato consilio vestro contra Fridericum dictum imperatorem negotium inchoasse, cum idem totis mentis affectibus aspiraret ad exterminium Lombardie." See also l.c., 385, 15th May 1229, and 405, 9th October 1229.

peace, to promise to forgive all offences committed by them and by others in connection with the help given by them to the Church. This left it open to him to take up any cause of offence prior to his excommunication. Gregory in his first (apparently) letter to the Lombard League after the peace, enclosing Frederick's promises, assured them that he would take the lightest offence to them as a grave offence to himself.[1]

The net result was really in Frederick's favour. Gregory had been obliged to accept the result of the crusade,[2] and he had not succeeded in weakening Frederick's hold over Sicily. During the contest Gregory had been compelled, by his need of money to carry on the struggle, to make pecuniary demands on ecclesiastics which were resented at the time, and formed an unfortunate precedent for the future.

During the years of uneasy peace that intervened between the peace of Ceperano and the final breach between Frederick and the Papacy, the main subjects of difference concerned the relations between the emperor and the Lombard League, and his treatment of the clergy, military orders, and rebels in Sicily. In the case of the Lombard League the efforts of the Pope were constantly directed to securing for himself the final decision in all matters in dispute between them and the emperor. In Sicily the special subjects of complaint related to the taxation of the clergy, their trial in certain classes of cases by the secular courts, the seizure by the king of lands held by the military orders of the Temple and of the Hospital, and the banishment or confiscation of the property of rebels, whose pardon by Frederick had in some cases been guaranteed by the Church. Towards the end of the period there was constant and growing friction regarding the filling up of vacancies in the Church, as the Pope would not accept the persons elected by the chapters, on the ground apparently that there had been undue influence by the king or his officials. There were other causes of friction, but not, on the whole, more serious than might occur in the normal relations between the Papacy and any other secular powers.

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[1] L.c., 420, 18th October 1230. Gregory assures them "vobis et parti vestre sufficienter est cautum, quod nullatenus vos offendet; sed remisit expresse, si eum forsitan offendistis. Quare non expedit ut exinde ullatenus dubitetis, cum nec leviter possetis offendi, quin graviter nos reputaremus offensos." This was not correct. Frederick had only pardoned offences committed during his quarrel with the Pope, and it is so put in a later letter by the Pope to the Lombard bishops, l.c., 454, of 27th September 1231.

[2] Though there is no reference to the matter in the peace terms, it appears that Gregory had tacitly accepted Frederick's ten years' truce with the Sultan of Egypt. *Vide* letter of 26th February to the Master of the Templars at Jerusalem, l.c., 427.

We have seen in the preceding section that Gregory, in appealing to the Lombard League to send their promised troops, disclosed how close the connection between them had been, by his statement that it was due to their pressing advice (summo desiderio et deliberato consilio) that he had started taking action against the emperor, who was wholly intent on their destruction.[1] He had consulted them while negotiations were going on,[2] and in his letter forwarding the terms of peace he assured them that he would look on any injury to them, however slight, as a serious injury to himself.[3]

In April 1230, while negotiations for peace were going on, Frederick had written the authorities of Cremona authorising them to arrange terms of peace with other Lombard cities, and to grant them forgiveness of all offences whatsoever against the empire.[4] Possibly the people of Cremona were not very anxious to have peace restored on easy terms for their enemies; at all events, whatever the reason, Frederick's offer appears to have met with no response. In 1231 he took up the matter again, and issued an encyclical, apparently to all cities of the imperial party, calling on them to send representatives to meet him in Southern Italy to discuss the steps to be taken to restore peace and justice among his subjects.[5] We do not know what followed this summons, but we find

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[1] See note 2, p. 254.

[2] L.c., 409, 10th November. He sends Frederick's request for peace "quatinus eo perspicaciter intellecto nobis vestrum consilium intimetis; scituri pro certo quod ecclesia mater vestra numquam vos deseret, . . ."

[3] See note 1, p. 255.

[4] M. G. H., 'Const.,' vol. ii. 125.

[5] L.c., 152, 10th March 1231. Encyclical announcing a meeting for the 25th April following in the Terra del Lavoro or in the Capitanata.

Gregory two months later writing a letter warning Frederick not to use force against the Lombards, and urging him to let the Pope act as mediator.[1]

As we have already mentioned, there were other causes of friction between the Pope and the emperor. A minor cause of papal dissatisfaction concerned the possessions of the Templars and Hospitallers. In the conditions of the peace of Ceperano, it was provided that all their possessions seized by the emperor or his officers should be restored to them.[2] Gregory wrote repeatedly on the subject to Frederick, but he did not tax Frederick with a breach of faith, and Frederick's defence was that he did not deprive them of anything they were legally entitled to hold.[3]

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[1] Epis. Sae. XIII., vol. i. 440, Gregory to Frederick, 18th May 1231. "saluti, honorificentie ac quieti tue credimus expedire, . . . in mansuetudine opera tua facias . . . nec longanimitatem tuam, que debet semper in pectore principis principari, seduci permittas, ut iustitiam exacerbens et preiudicans equitati, contra Lombardos non iuris ordine set virium potestate procedas, quia facile crederetur, quod ad id non sine nostri offensa ex precedentis indignationis amaritudine movereris . . . celsitudinem tuam rogamus, monemus et hortamur in domino . . . cum ad reconciliationem intendamus auctore Domino efficaciter interponere partes nostras, nostris consiliis acquiescas, rescripturus nobis plene ac plane tue super hoc arbitrium voluntatis, ut ex tuo responso sciamus, qualiter nobis sit in negotio procedendum."

[2] M. G. H., 'Const.,' vol. ii. 130, p. 173, l. 11 f.

[3] *Vide* Epis. Sae. XIII., vol. i. 425, 19th January 1231; 428 of 26th February 1231; and 439 of 29th April 1231, all to Frederick; also 431 of 26th February 1231 to the Bishop of Reggio. From 428 it appears that his letters refer to possessions restored, and then again taken away from them. In 439 Gregory suggests arbitration as regards fiefs, while in other cases the matter should be decided by the Pope or by some one delegated by him. We have not Frederick's answers to his letters, but he explained his position in 1238, *vide* H.-B., vol. v. 252: "A Templariis et Hospitalariis verum est quod per judicium et per antiquam constitutionem regni Sicilie revocata sunt feudalia et burgasatica que habuerunt per concessionem invasorum regni. . . . Allia tamen feudalia et burgasatica dismissa sunt eis qualitercunque ea adquisierunt et tenuerunt ante mortem regis Willielmi secundi seu de quibus haberent concessionem alicujus antecessorum suorum. Nonulla vero burgasatica que emerunt revocata sunt ab eis secundum formam antique constitutionis regni Sicilie: quod nihil potest eis sine consensu principis de burgasaticis inter vivos concedi vel in ultima voluntate legari quin post annum, mensem, septimanam et diem aliis burgensibus secularibus vendere et concedere teneantur."

Frederick's behaviour as regards the Templars and Hospitallers is made one of the grounds of his deposition by Innocent IV. (M. G. H., 'Const.,' ii. 400, p. 511, 12 f.).

In July Gregory wrote a very angry letter regarding the constitutions of Melfi (a code of laws for the Sicilian kingdom), which Frederick was about to publish, declaring that they showed him to be a persecutor of the Church and a destroyer of public liberty (ecclesie persecutor et obrutor publice libertatis).[1] Frederick was very indignant, and Gregory evidently felt he had gone too far, for three weeks later he wrote a conciliatory letter pointing out that his rebuke, though sharp, had been private and by letter, in which it is difficult to give expression exactly to what one feels.[2] Frederick did not give way, and the constitutions were published in August 1231, and declared to cancel all previous legislation conflicting with them.[1]

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[1] Epis. Sae. XIII., vol. i. 443, 5th July 1231. "Intelleximus siquidem, quod vel proprio motu vel seductus inconsultis consiliis perversorum, novas edere constitutiones intendis, ex quibus necessario sequitur, ut dicaris ecclesie persecutor et obrutor publice libertatis. . . ." For the constitution, see H.-B., iv. p. 1 f. Gregory does not mention which of the constitutions he objects to. Among those he probably disliked are the following:—

Title I. B., p. 7, regarding heretics and Patarenes, which left the initiative in inquiries to the king's officers.

Title LXVIII., p. 40, provides that "Si quis clericus de hereditate vel aliquo tenimento quod non ab ecclesia, sed a nobis vel ab alio aliquo per patrimonium [sive aliunde] teneat, appellatus fuerit, volumus ut de hoc in curia illius in cujus terra possessionem . . . habuerit, respondeat . . . non tamen ut persona sua exinde capiatùr vel incarceratur."

Title LXXI., p. 43, provides that clerics and judges "non sint bajuli."

Title XLV., p. 48, clerics not to be tried in secular courts, "excepto si de proditione aliquis fuerit appellatus vel de alio magno hujusmodi maleficio, quod spectat ad majestatem nostram." In such cases the trial to be in the royal curia.

Titles II. and III., p. 119-20, forbid the ordination of vassals without the permission of their lords.

Liber I., Titulus LXIX., part ii. p. 227, provides that "De burgensaticis petitorio vel quolibet possessorio adipiscende, recuperande vel etiam retinende possessionis clericum seu etiam quemvis religiosum pecuniaria actione conventum, in civili volumus examine respondere." See note 1, p. 227, on the Pope's objection and Frederick's reply.

See also Title XXIX. on the same page, "De rebus stabilibus non alienandis ecclesiis," which provides, among other things, "si in ultima voluntate aliquem de predictis (*i.e.*, clerk or monk or member of the military orders) locis heredem instituerit, tunc domus que institutionem vel legatum acceperit" is bound to sell it within a year, otherwise after the year is over "fisci nostri juribus volumus applicari." See on the subject, note 3, p. 227, and note 1, p. 228 of H.-B.

[2] Epis. Sae. XIII., vol. i. 447, 27th July 1231. "Et si quidem extiterit aspera increpatio, non fuit publica sed privata, non clamosis vocibus sed litteris expressa secretis, que vix unquam ad scribentis affectum sufficiunt exprimendum."

Although at one time a rupture had appeared imminent, it was averted, as both parties had need of one another: Gregory required Frederick's help in dealing with rebellious Romans, while Frederick wanted the Pope's support against a rebellious son. Gregory was also at this time intent on suppressing heresy, and Frederick had, in answer to the Pope's appeal, promised to do his best to suppress it in the kingdom.[2] He took care, however, in his constitutions to keep the preliminary investigations in the hands of his officers,[3] and later on we find Gregory suggesting that he was using the pursuit of heresy as a pretext for burning his political opponents.[4]

Some time in the early summer Frederick summoned a meeting of the imperial diet to Ravenna, apparently after Gregory's warning not to use force against the Lombards. Whatever Frederick's intentions may have been at the time, he finally decided to endeavour to settle his differences with the Lombards peaceably, and before September he accepted the mediation of the Pope.[5]

Gregory wrote some of the Lombard bishops, informing them that Frederick had accepted him as arbitrator between himself and the Lombard League, and asked them to inform the rectors of the League, and to warn them of the danger of interfering with the proposed meeting between the emperor and his son. Three weeks later he wrote the bishops again, insisting on Frederick's peaceable intentions, and urging that no difficulties be placed in the way of the meeting, lest they should appear to be the parties preventing peace negotiations.[1] Frederick no doubt thought that, in view of the Pope's mediation, he would have no difficulty in holding the diet, and in the middle of September he issued notices, acting, as he said, on the advice of the Pope, summoning it for the following November at Ravenna, among the objects being the improvement of the state of Italy and the settlement of disputes between the cities.[2] How little he expected resistance appears from a letter of Gregory's written after his final breach with Frederick in 1239, in which he states that the emperor entered Lombardy without an armed force (qui etsi Lombardiam famulis stipatus inermibus accessisset).[3] The Lombards, however, had closed their ranks on hearing of the proposed meeting, and a number of cities rejoined the League in July, notwithstanding Gregory's letters. They were not to be moved, and again blocked the passes. They did this after a meeting on the 26th October 1231 at Bologna, at which they fixed the number of troops to be employed. They also wrote the Pope that it was his duty to see that the emperor brought no armed forces to Ravenna.[1] None of the League put in an appearance, and as Frederick's son, King Henry, had also not come, the emperor issued a fresh notice for March 1232, but to assemble at Aquileia, where the Lombards could not prevent the Germans attending.[2] Meanwhile Gregory had appointed two new legates to restore peace between the emperor and the League. Frederick cannot have welcomed Gregory's choice, as both were Lombards; on the other hand, the envoys of Brescia, one of the League cities, wrote their podesta that they had great confidence in them, especially as one of them came of a Piacenza and the other of a Vercelli family.[3] These legates before seeing the emperor went to Bologna, where they met the leaders of the League, and discussed the conditions of an agreement with the emperor. On the one hand, Frederick had put in claims for satisfaction on account of the wrongful blocking of the passes to the Germans; on the other hand, the Lombards maintained they had only acted in self-defence. With regard to Frederick's claim to be the judge in cases of disputes between the cities, Piacenza replied that he was an enemy of the Lombards, and therefore no suitable judge between Lombard cities and their enemies. The Brescia envoys told the legates that in their opinion they had done no injury to the emperor, and that they were not prepared to go beyond a purely formal satisfaction (nec volebamus facere emendationem nisi nudum et purum honorem). They also insisted that Frederick's son and the German princes must not be attended by more than

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[1] H.-B., vol. iv. p. 5.

[2] L.c., vol. iii. p. 268 f. Frederick writes: "Celestis altitudo consilii que mirabiliter in sua sapientia cuncta disposuit non immerito sacerdotii dignitatem et regni fastigium ad mundi regimen sublimavit, uni spiritualis et alteri materialis conferens gladii potestatem, ut hominum ac dierum excrescente malitia et humanis mentibus diversarum superstitionum erroribus inquinatis uterque justitie gladius ad correctionem errorum in medio surgeret et dignam pro meritis in auctores scelerum exerceret ultionem." He undertook to do all in his power to exterminate heresy in his kingdom.

[3] See l.c., vol. iv. p. 7 (Title I. B. of the Constitutions of Melfi).

[4] Epis. Sae. XIII., vol. i. 550, 15th July 1233. Gregory to Frederick. "Verumtamen expedit . . . quod sub hereticorum pretextu, quorum dudum aliqui pro firmamento fidei, ut asseris, incendio sunt commissi, fideles, qui forte tuam celsitiudinem offendendo non heretici . . . sunt inventi, nullo modo pereant."

[5] This appears from Gregory's letter of the 4th September 1231, Epis. Sae. XIII., vol. i. 452, to certain Lombard bishops,

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[1] Epis. Sae. XIII., vol. i. 454, 27th September 1231. Gregory to certain Lombard bishops. On the same day he wrote them another letter (l.c., 456), stating that the Grand Master of the Teutonic Order was going to Lombardy, sent there by the emperor, and he directed them to assist him "in hiis, que idem magister ex parte ipsius imperatoris rectoribus prefatis exponet."

[2] M. G. H., 'Const.,' ii. 155, 1st November 1231. Letter from Frederick to the podesta and Commune of Genoa. We have not got Frederick's original summons for the meeting at Ravenna in November, but in this letter Frederick states "Dudum per litteras nostras vos fecisse recolimus plenius certiores, qualiter de consilio summi pontificis indiximus primo venturo mense Novembris . . . generalem curiam in Ravenna cum rege Alamannie, filio nostro, et universis imperii principibus . . . desiderio summo zelantes ad honorem Dei et imperialem gratiam pacem universalem imperii reformare, disponere statum Italie prosperum et tranquillum, sedare discidia civitatum intus et extra ferventia et inter vicinos populos omnem turbinem et odii fomitem amovere."

[3] Epis. Sae. XIII., vol. i. 750, 1st July 1239, p. 648, l. 34 f. This of course does not mean that none of his followers carried arms.

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[1] H.-B., vol. iv. p. 937 f. "Fragmentum de colloquio a rectoribus societatis Lombardiæ apud Bononiam celebrato, &c." Two meetings were held in October at Bologna, and the distribution of the forces to be raised was decided. "Iterum pro bono pacis et concordie et ne aliqua sintilla mali inter imperatorem et Lombardos possit oriri, statuerunt legatos ex eis . . . ad summi pontificis magnitudinem dirigere . . . exorantes ipsum . . . ne imperator ad Lombardie partes possit nec debeat cum exercitu accedere; significantes ei si hoc facere presumeret, quod incommodum pariter et detrimentum Romane posset inde consequi Ecclesie, [si] cum exercitu suo ad civitatem Ravene accessiset."

[2] See Winkelmann, 'Kaiser Friedrich II.,' vol. ii. p. 334, note 2.

[3] M. G. H., 'Const.,' ii. 165, p. 203, l. 139-41.

100 unarmed knights. The legates agreed they would not ask for more concessions without the written consent of the rectors and ambassadors of the League cities.[1] The legates intended to go on to Ravenna to see Frederick, but probably he had heard something of the proposals they intended to put before him, and he left Ravenna before they arrived, making his way by Venice to Friuli. Faced with this situation, the legates reported their failure to the Pope.

It shows Frederick's desire for a settlement that, notwithstanding what had passed, he agreed in May to allow the same legates to arbitrate. The situation had, however, altered in his favour, as Verona had passed into friendly hands, and the scope of the arbitration was now limited to the satisfaction to be given to him and to the security to be given to the League if it had to allow a free passage to the emperor and to his son on the way to and from Germany. The legates or the Roman Church could not deal with other matters unless both parties agreed.[1]

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[1] L.c., 161-169. There is no record of Frederick's claims, but from the "propositiones Cardinalium," 166, it appears that the matters they had to deal with were "de satisfactione idonea imperatori prestanda, de securitate eidem Societati facienda et firmanda et modo adhibendo idoneo, si imperator velit filio suo et principibus Alamannie venientibus ad ipsum a dicta Societate liberum transitum exhiberi, primo tractetur per ipsos legatos inter imperatorem et Societatem prefatam. . . . Et si inter imperatorem et memoratam Societatem aliqui alii etiam articuli apparerent, ex quibus posset discordia generari vel foveri concepta, placeat ut eodem modo et ordine sopiantur." With regard to a claim by the emperor to decide disputes between the cities, the people of Piacenza (164) "dicunt, quia si imperator debet esse iudex, qui contrarius et inimicus de longo tempore extitit Lombardorum . . . merito timere possunt Lombardi, ne ius eorum pereat vel quod imperator eorum iuri contrarium se opponat." The envoys of the people of Brescia wrote to their podesta (165) that they had, at the legate's request, given their replies in writing regarding the alleged injury done to the emperor. It was to the effect that "non credebamus nos offensionem imperatori fecisse nec volebamus facere emendationem nisi nudum et purum honorem, et non que pertineret ad prestationem rerum vel obsequium personarum. Super adventu filii eius et principum diximus, quod placebat, ut venirent cum c. militibus tantum et sine armis, qui non deberent dampnum Lombardis dare vel vim inferre. Quibus etiam a cardinalibus intellectis, responderunt, quod non facerent nobis aliud preceptum nisi secundum modum predictum absque consensu rectorum et ambaxatorum, et de hoc facta est publica scriptura. Verumtamen volebant, quod commissio fieret in eis publice generalis, quia pro maiori honore sibi reputabant et melius putabant factum posse procedere." In view of the legate's attitude, it is not surprising that the envoys should write, "Noveritis insuper, quod secundum quod videre et intelligere potuimus, in cardinalibus magnam fiduciam habemus, maxime quia unus illorum est Placentinus et alius de Vercelensibus partibus."

Negotiations proceeded, but finally the legates referred the whole matter again to the Pope, as on the imperial legate failing to attend a meeting at Lodi the Lombard rectors tried to make it an excuse for taking no further part.[2] The emperor had in the meantime (in April) settled the dispute with his son Henry, who had endeavoured to assert an independent position, trusting in the help of the cities, the lower nobility, and the "ministeriales."[3] His defeat was due to the combination of the emperor and the princes, ecclesiastical and secular, for it was to their interest to defeat Henry, who had endeavoured to make use of the cities against all the princes alike.

The more cordial relations between Frederick and the Pope were, as already mentioned, due to their mutual need of one another, for while Frederick had to deal with a rebellious son in Germany, the Pope had much trouble with the Romans, and had to appeal for help to Frederick on several occasions.[4] In connection with his Roman troubles he begged Frederick to direct the people of Viterbo to obey the instructions of his legates regarding peace with Rome.[5] Frederick evidently sent a satisfactory reply, for Gregory answered with an almost gushing letter, foreshadowing the help of the Church in return for his support.[1] In February 1233 there was another call for help, in which, however, more stress was laid on the duty of the emperor to help the Mother Church.[2] A week later the Pope wrote expressing his dismay at hearing that Frederick was going to Sicily instead of doing his duty as his principal defender.[3] Frederick had to deal with a serious insurrection in his kingdom, and probably was really unable to spare much help for the Pope. Gregory, left more or less to his own resources, at last succeeded in getting the people of Viterbo and of Rome to make peace, and was thus for the time being no longer dependent on Frederick's help against the Romans.

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[1] L.c., 169, "Articuli accessorii formæ compromissi additi," 13th May 1232. It provides (p. 209, l. 27 f.) "de isto ultimo articulo sic incipienti; 'et si inter imperatorem et memoratam Societatem aliqui alii etiam articuli apparerent, ex quibus posset discordia generari vel foveri concepta, placeat ut eodem modo et ordine sopiantur,' nichil possint iidem legati nec Romana ecclesia laudare, diffinire aut terminare, nisi de voluntate et consensu utriusque partis."

[2] Epis. Sae. XIII., vol. i. 471, 12th July 1232. Gregory to Frederick.

[3] See Winkelmann, 'Kaiser Friedrich II.,' vol. ii. chap. v. of Book VI.

[4] See Epis. Sae. XIII., vol. i. 473 of 24th July, 486 of 21st October, 488 of 27th October, and 497 of 7th December 1232; also 508 of 3rd February and 510 of 10th February 1233.

[5] L.c., 486.

The cities comprised in the Lombard League gave a joint reply to the Pope in 1233. They were at this time in a very truculent mood. The great religious movement in the north of Italy known to historians as the "devotio" or "hallelujah" was at its height, and helped to strengthen the anti-imperialist parties in the Lombard cities. Gregory was no longer in need of help from the emperor, and the Sicilian insurrection had not long been suppressed by Frederick when the cities submitted their answer. They denied that any satisfaction was due to the emperor, as they had done him no injury. On the other hand, the emperor, the king (*i.e.*, Henry), and the German princes must not enter Lombardy, the March of Ancona, or Romania till the Pope had settled the questions at issue, and even after that the emperor or the Church were to let the rectors know by what route they would come, and how long they would stay; the rectors would then decide what to do. In any case, the emperor or king must not be accompanied by more than 100 unarmed knights. They also asked that Lombardy, the March, and Romania be taken under the protection of the Church.[4]

Gregory gave his decision on the 5th June following. In his letter to Frederick he went back to the agreement of 1232, and took no notice of the Lombard claims of 1233, but he only dealt with Frederick's complaint of the injury done him at Ravenna. He ordered the parties to make peace, to forgive all injuries, and to return captives. The cities belonging to the League mentioned in the "compromissum" were to furnish at their own expense five hundred knights for two years for the Holy Land, "ad honorem Dei . . . et ecclesie . . . ac tuum." Other questions included in the "compromissum" were reserved for future orders.[1] Both parties were indignant with the award: the Lombards because no provision had been made for them,[2] Frederick because no atonement was made for the wrong he had suffered[3]; but although there was some angry correspondence, he very soon accepted the award.[4]

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[1] L.c., 497.

[2] L.c., 508. "Qua fide, qua devotione matri ecclesie debeas, fili karissime, complacere, censemus indignum explicare litteris, cum tibi sit evidens multiplicibus argumentis."

[3] L.c., 510.

[4] M. G. H., 'Const.,' ii. 176, 24th May 1233. Petitiones Lombardorum.

In the meantime Frederick had been suppressing the insurrection in his kingdom, and apparently from a letter of Gregory's he had taken advantage of the legislation against heretics to burn those who rebelled against himself.[5]

In 1234 Gregory and Frederick again had need of one another, and there was a fresh rapprochement. The Romans were giving trouble to the Pope, and Henry was again asserting himself against his father. The Pope had so far dealt with only one point in the Lombard question, and he now took it up again. At the request of two papal legates, Frederick in April 1234 agreed to allow the Pope and the Roman Church to deal with all questions between him and cities in Lombardy, in the March of Treviso, and in the

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[1] L.c., 177, 5th June 1233. Arbitrium Gregorii IX. The "compromissum" was the agreement to accept the Pope's award.

[2] L.c., 178, 7th June 1233.

[3] L.c., 180, 12th July 1233. Letter of Frederick to the Bishop of Ostia, a nephew of the Pope's. Epis. Sae. XIII., vol. i. 552, 12th August 1233. Gregory to Frederick. The Bishop of Ostia also replied to Frederick's letter, H.-B., vol. iv. p. 450.

[4] M. G. H., 'Const.,' ii. 182, 14th August 1233. Letter of Frederick to Gregory accepting the award. It is dated only two days later than Gregory's letter. It was written from Castrogiovanni in Sicily, and so, long before Frederick could have heard from the Pope.

[5] Epis. Sae. XIII., vol. i. 550, dated 15th July 1233.

Romaniola.[1] The Pope informed the rectors of the League of this early in May, and he asked them to let him know whether they were prepared to do the same. He also asked them not to interfere with the passage of troops from Germany on their way to the emperor, lest Frederick should have just cause of complaint against himself and the Lombards.[2] He wrote again on the same subject about a fortnight later, assuring them that the leaders of these forces were prepared to give a formal guarantee that they would do no injury to the Lombards either going or returning.[3]

Soon after these letters the emperor paid at Riete a surprise visit to the Pope. He was accompanied by his young son Conrad, and his object was to attest his devotion to the Church, and to assure Gregory that he would recover for him lands belonging to the ecclesiastical states.[4]

Gregory in his turn wrote strong letters to Palestine in support of Frederick, and sent out the Archbishop of Ravenna to see that effect was given to his wishes.[5] But desirous as the Pope may have been to meet Frederick's wishes as far as possible, he was careful not to alienate the Lombards, for in July he wrote them again, telling them that he could not without injury to the Apostolic See (sine confusione sua) avoid using the help of the emperor against the Romans—help the emperor had himself voluntarily offered (at Riete). The Pope had consequently been obliged to ask them to allow his forces to pass through Lombardy; he assured them of his determination to preserve their liberty and honour, and he ended by asking them to let him know whether they would accept the Pope's arbitration, and said that they might remain assured of the favour which he proposed to show them in everything "quantum cum Deo possumus."[1] In September Frederick sent a fresh acceptance of the Pope's arbitration, adding that he could also deal with any complaints made by his adversaries in Northern Italy of wrongs inflicted by him, and generally with any matters out of which quarrels had arisen between them.[2] The following month the Lombards assented.[3]

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[1] M. G. H., 'Const.,' ii. 183, April 1234. Forma Compromissi Imperatoris Prior. Frederick agrees to this "attendentes, qualiter sancta Romana ecclesia mater nostra singulis ex debito, quo tenetur indifferenter ad omnes, illibata iura conservet et nos unitati sue ad tuendum ecclesiasticam libertatem et pro statu imperii reformando reddiderit uniformes . . . teneamur in omni reverentia tamquam matri et honorem ecclesie ac reformationem imperii iuxta consilium et submonitionem ipsius facere debeamus."

[2] Epis. Sae. XIII., vol. i. 581. Gregory to the rectors of the Lombard League, 4th May 1234. Gregory informs them that Frederick has agreed to submit to the Church "totum negotium Lombardie, &c.," "Quare mandamus, quatinus, si hoc ipsum vultis facere, nobis vestris patentibus litteris intimetis. Ne autem aliquo interveniente obstaculo tantum bonum valeat impediri" he begs them "ut si milites de Teutonie partibus sint in procinctu ad eiusdem imperatoris presentiam accedendi, eos impedimentis aliquibus non gravatis, ne de nobis et vobis, quibus de ipso non videtur merito dubitandum, iustam habeat materiam murmurandi."

[3] L.c., 583, 20th May 1234, p. 474, l. 16 f. In this letter Gregory remarks that should obstacles be placed in the way of the troops, "non immerito extimari poterit, quod cum Lombardos speciales ecclesie filios reputemus et eis, quantum cum Deo possumus, in necessitatibus assistamus, id ex nostro favore processerit vel consensu."

[4] In references to this visit from different points of view, see l.c. 750, p. 649, l. 5 f., and M. G. H., 'Const.,' ii. 215, p. 293 l. 23 f.

[5] Epis. Sae. XIII., vol. i. 593, 7th August, to John of Ibelin; 594, of 8th August, to the barons of the kingdom of Jerusalem and to the citizens of Acre; 595, 9th August, to the archbishops and other prelates in the east.

In November 1234, Henry, Frederick's son, sent envoys to make an alliance with the Lombards, and took them under his protection. The treaty is dated 17th December. It was an alliance offensive and defensive on the part of the king, but only defensive on the part of the League. Milan and its allied cities undertook to defend Henry so long as he was in Lombardy, while Henry undertook to help and support Milan and the other League cities, and not to make any agreement, nor peace with Cremona and Pavia and their allied cities, without the consent of the Milanese and their allies.[4] On hearing of this, Frederick arranged for a long absence from Sicily, and started for Germany in April, and negotiations with the Lombards ceased.

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[1] L.c., 587, 3rd July 1234. In this letter he remarks, "Verum cum non possetis (*i.e.*, the members of the Lombard League) absque offensa sedis apostolice offendi, que reputat vos membra eius honorabilia et filios speciales."

[2] M. G. H., 'Const.,' ii. 184, September 1234.

[3] L.c., 185, October 1234.

[4] L.c., 325-28, 13th November to 17th December 1234. 328 of 17th December is the Scriptum Fœderis. In this document Henry undertakes to help, maintain and defend "contra inimicos, quos nunc habent (*i.e.*, the cities of the Lombard League) vel de cetero habebunt in Lombardia vel alibi, et offendere inimicos eorum secundum posse ipsius regis et principum, presertim Cremonam et Papiam et earum sequaces, qui nunc sunt vel pro tem-

When Frederick left Italy, Gregory was on good terms with him, and supported him against his son. He wrote in March to all the ecclesiastical and secular princes in Germany, directing them to bring back Henry to the right way, and he released from their vows all who had given oaths injurious to the emperor.[1]

Frederick, from whom, of course, the Pope could not expect much help at such a time, wrote him before he started, advising him not to accept a disadvantageous peace with the Romans, as he would do what he could to defend the Church, though he could not give up his journey to Germany.[2]

How friendly the relations between the Pope and the emperor were at this time is shown by the negotiations for the marriage of Frederick to Isabel, the sister of Henry III. According to Frederick the marriage was suggested by Gregory, and he requested the Pope to settle for him details, such as the dowry to be paid. Frederick was at the time bound by alliance to Louis, and both Gregory and Frederick wrote assuring him that he would suffer no injury from the friendly relations established between Frederick and Henry III. of England.[3]

Frederick's arrival in Germany very quickly put an end

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poribus fuerint. Et quod non facient ipse rex et principes aliquam concordiam vel pactionem vel conventionem vel pacem cum inimicis Mediolani . . . aliarumque civitatum . . . et locorum de societate et amicitia Mediolani undecunque sint, et presertim cum Cremona vel Papia. . . . Et eodem modo teneantur de predictis omnibus prefatus dominus rex et principes Alamanie, cum fuerit imperator ipse dominus rex factus." It will thus be seen that Henry abandoned all for which Frederick had been contending, and gave away every point to the Lombard League.

[1] Epis. Sae. XIII., vol. i. 630, 13th March 1235.

[2] H.-B., vol. iv. p. 535 f., 27th March 1235.

[3] See especially l.c., p. 539, 25th April 1235. Written by Frederick to Louis. Gregory also wrote Louis, l.c., p. 536 f., 16th April.

to Henry's rebellion, and it ended in his imprisonment up to the time of his death seven years later.

We may infer that Frederick and Gregory continued on good terms until the end of July 1235, from the fact that in May he appointed the Patriarch of Antioch, a friend of the emperor, legate in Lombardy, the March of Ancona, and the Romaniola,[1] while as late as the end of July he continued to support the emperor in the east.[2] On the same day (28th July) that Gregory wrote to Palestine supporting Frederick, he also wrote the princes summoned by Frederick to Mainz. He begged them to induce Frederick, notwithstanding the "presumptio" of the Lombards, to leave in his hands the settlement of the Lombard question as already agreed by him (*i.e.*, in 1234 before the Lombard treaty with Henry), as a crusade was urgently needed, and peace among all Christian peoples would do more than anything else to further the cause of the Holy Land.[3] This letter was dated the 28th July, and on the 27th August Frederick wrote informing the Pope that the Lombard question had been dealt with at a great imperial diet, and that all had agreed on an expedition against the Lombards next year, but that notwithstanding he was still prepared to leave the matter in the hands of the Pope, provided the matter was settled by Christmas on terms honourable to the emperor and to the good of the empire (ad honorem nostrum et imperii commode). Further delay was impossible, as it might merely enable the Lombards by dilatory tactics (frustratoriis dilationibus) to prevent the expedition fixed for the following year.[1]

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[1] Epis. Sae. XIII., vol. i. 641, 21st May 1235.

[2] L.c., 649, 28th July 1235, and 650 of same date.

[3] M. G. H., 'Const.,' ii. 194, 28th July 1235. Gregory wrote to the ecclesiastical and secular princes assembled at the imperial court "universitatem vestram rogamus et obsecramur in domino Iesu Christo . . . quatinus pensato prudenter quod Sancte Terre negotium non possit promoveri facilius quam quod christianus populus sit in sereno pacis et concordie constitutus, omni rancore deposito, quem ex quacumque causa contra Lombardos hactenus concepistis, carissimum in Christo filium nostrum Fredericum . . . ad hoc, sicut attentius poteritis, vestris exhortationibus inducatis, quod ipse, quacumque turbatione propulsa, quam Lombardorum presumptio eidem dinoscitur induxisse, negotium Societatis Lombardie, marchie Tervisine ac Romaniole in manibus ecclesie iuxta imperialis forme tenorem, quam ab ipso imperatore recepimus et dicte Societatis rectoribus sub bulla nostra missimus interclusam, precise ponere non omittat."

After Frederick's reply nothing could go right between him and the Pope. In September, Gregory informed Frederick that he had cancelled an order of the papal legate in Palestine, placing the people of Acre under interdict, and he also informed him that while he had restored the *status quo ante* before the quarrel began between Frederick's marshal and the nobles of Palestine, he ought to replace his marshal next year by some one to be selected by the Pope.[2] On the same day he wrote Hermann, the Master of the Teutonic Order, complaining bitterly of the conditions attached by the emperor to the settlement by the Pope of the Lombard question. These conditions were, as we have seen, that the settlement should be on terms honourable to the emperor and for the good of the empire, and that the decision must be given on an early date.[3] Gregory repeated this complaint to Frederick, to his legate in Lombardy, and even to the rectors of the League, though in writing them he warned them of the danger if they did not comply with his summons to attend at an early date.[1]

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[1] L.c., 195, 24th August 1235. Frederick informed the Pope of the eager desire of the German princes for the expedition against the Lombards: "Nos autem, qui vestris paternis consiliis adherentes, quanto prosperioribus potentie nostre successibus gloriamur . . . cum maiori benignitate intendimus habere processum et innate mansuetudinis moderamine perfruentes Deo et ecclesie cupimus effici gratiores, a consilio et voluntate vestra nolumus seperari," he agrees to leave the matter to the Pope on the same conditions as before provided "quod usque ad festum nativitatis dominice primo venturum idem negotium ad honorem nostrum et imperii commode componatur. Nam si ultra dilatio compositionis accederet, intolerablile videretur, si Lombardi, sicut moris eorum est, molirentur ducere nos per verba et tam sollempnis per principes et proceres imperii expeditio iam prefixa posset frustatoriis Lombardorum dilationibus impederi."

[2] Epis. Sae. XIII., vol. i. 656, 22nd September 1235.

[3] L.c., 657, 22nd September 1235. With regard to Frederick's conditions Gregory remarks, "Verum cum ex huismodi serie litterarum, a prefati verbo iudicis differente, ac ex eo, quod imperialis industria talem conditionem adiecit, per quam compromissum tollitur et aliquatenus tantum posse terminari negotium non videtur, . . ." and he asks Herman to beg the emperor "quod super eodem negotio se iuxta memoratam formam precise ac sine conditione aliqua in manibus ponat ecclesie et se illis laboribus non involvat, a quibus de facili nequeat expediri, diligenter moneas et inducas; nuntiaturus eidem, quod si iamdicte provisionis tenorem quod absit infringens contra Lombardos, maxime si se precise in manibus ecclesie ponere sint parati, hoc potissimum tempore iuxta predictum consilium procedere moliretur, tantam exempli perniciem aliis tribuendo, unde presumi posset a pluribus, quod ceteros ecclesia fefe-

The Lombards, instead of attending on the date fixed, renewed in November the League, in which Ferrara was now included.[2] In Verona a new podesta was appointed, and imperialists, who would not obey him, were threatened with excommunication by the Pope.[3] Gregory renewed his old complaints regarding the administration in Sicily. Frederick expressed his surprise that the Pope should be disturbed by mere rumours, and Gregory answered on the last day of February by a lurid description, but without details, of what was going on there.[4] Frederick had in his letter taken credit to himself for disbelieving that the Church had anything to do with the renewal of the League or with events in Tuscany and Verona. The Pope let him know plainly that he would proceed with the excommunication of any disobeying the new podesta in Verona, a " fidelis " of the Pope and appointed by him. So far as the League was concerned it was not surprising that fear of the emperor should have led to its renewal, nor that the members of the League should have endeavoured to enlist public opinion in their favour (quod sibi favorem acquirere moliantur) by giving out that the Church had favoured their action.[5] The letter was unfriendly, if not hostile,

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lisset, id pati equinamiter eandem ecclesiam non deceret," Gregory makes no reference to the new situation created by the Lombard treaty with Henry, entered into after both parties had agreed to the Pope's arbitration.

[1] L.c., 658, 661, 662. In the letter to the Lombards, Gregory directs them to attend on the day fixed " Alioquin vobis poteritis imputare, si quod vobis periculum exinde contigerit imminnere."

[2] H.-B., vol. iv. p. 796 f., 5th and 7th November 1235.

[3] Epis. Sae. XIII., vol. i. 676, p. 575 (and H.-B., iv. p. 828 f., especially 831-2).

[4] L.c., 676.

[5] L.c., 676, p. 575, l. 20 f., Gregory writes, " si Lombardi vel alii tue metu potentie sibi a futuris student casibus precavere et iuxta sapientiam huius mundi aliquid de ecclesia pro sua parte disseminant, . . . si Veronensibus ad bonum pacis per venerabiles fratres nostros . . . auctoritate nostra reductis, et . . . nobilem virum . . . fidelem nostrum ad nuntiorum utriusque partis instantiam, iniuncto ei quod via procedens regia nequaquam ad sinistram vel dexteram declinaret, in potestatem duxi-

and ended with an open threat. Three weeks later Gregory announced the arrival of the Lombard envoys, who stated that they were unavoidably prevented from coming before (Gregory gives no reason in this nor in any other letter), and he asked Frederick to send back the Master of the Teutonic Order to enable the Pope to deal with the matter. The Lombards had undertaken to accept the Pope's orders, and the Church could not tolerate an attack in the meantime on them (id pati equinamiter eandem ecclesiam non deceret).[1] Frederick answered Gregory in April, pointing out it was very difficult to deal with general complaints, and his officers might in some cases have done wrong; if so, he would deal with them severely. Clerics had only to appear in his courts when a dispute concerned a fief or lands in his own demesne. He denied the charge that he ill-treated those who had supported the Church. We need not follow him in his denial of other charges, but may note that he warned the Pope that if he excommunicated people in Verona who had, in the name of the emperor, ejected persons corrupted by the Lombards, it would confirm the opinion that Gregory desired to force Verona into the Lombard League.[2]

Besides answering the Pope, Frederick took steps to have public opinion on his side. He wrote Louis IX., complaining

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mus providendem, non est, quid nobis valeat imputare. Verumtamen sustinere non possumus, quin contra eos, qui, excommunicationum sententiis, iuramentis et penis interpositis vilipensis, potestatem, qui pure se habuit et de sinceritate fidei ab utraque parte publice commendatur, capere et pacem non sunt veriti violare, sicut iustitia exigit, procedamus."

[1] L.c., 678, 21st March 1236. Gregory ends the letter as follows: "Diligenter enim considerare te convenit, quod illi qui excellentie tue contraire consulunt, ad id te nituntur inducere, per quod te illis laboribus involuto, de quibus de facili nequeas expediri, utilitates suas fortius valeant procurare."

[2] H.-B., vol. iv. p. 828 f., 16th April 1236. With regard to Verona, Frederick writes (pp. 831-2): "Denique litterarum vestrarum caudam dissimulatione non videmus transeundam, in qua contra Veronenses qui Lombardorum versutiis involuti, ejectis de civitate illis qui corrupti jam fuerant fraudibus et pecunia Lombardorum, nomen nostrum et imperii publice invocarunt, ad excommunicationis sententiam vos velle procedere dixistis; nec in hoc commodum nostrum solummodo, sed honorem Ecclesie contemplamur. Nonnulli sunt etenim qui, forsitan zizaniorum filii, ad aggregandum civitatem ipsam societati Lombardorum sub pretextu petitionis obsidum vos extimant aspirasse."

of the Pope's attitude towards the Lombard situation, his insistence on an unqualified acceptance of his arbitration, and suspension of action against the Lombards pending the crusade, a crusade which could not take place till the truce with the Sultan had expired.[1] He also wrote Henry III., asking for his good offices, and Henry III. did write both the Pope and the cardinals on his behalf.[2]

Frederick evidently did not accede to the Pope's request to leave the settlement of the Lombard affairs in his hands, for in May he issued an encyclical announcing that he would hold an assembly at Piacenza, to which he invited envoys from all Italian cities north of Rome (ab urbe citra), at which he desired the presence also of ambassadors from Milan and other League cities. Its object was to prepare the way for a crusade, and to do this it was necessary to consider means for suppressing heresy, for securing the rights of the Church and of the empire, and finally for restoring peace, and doing justice to sufferers from the dissensions in Italy. He dwelt on the importance of the empire not only in temporal matters, but also in protecting the Church from injury by heretics or others.[3]

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[1] L.c., p. 872 f. Written not long after Gregory's letter of 21st March 1236. Frederick complains of Gregory (p. 879) that "processum nostrum in Italiam, quem odiose quodam guerre vocabulo denotare velle videtur, occasione Terre Sancte suspendi rogavit ad presens. . . . Nunquam enim intentionem pape talem esse credimus quod occasione transmarini negotii deberet justicie gladius hebetari. Nam et post edictam constitutionem eamdem, contumaciam Romanorum jura Ecclesie usurpantium, requirente Ecclesia non dimisimus impunitam. Sic quilibet contra nos et imperium posset calcaneum indevotionis erigere, sic posset quilibet rapinas et furta ac quelibet scelera perpetuare sed mucronem quem de manu Dei ad bonorum laudem et vindictam malefactorum accepimus, evaginare propterea non possemus."

[2] Henry wrote not only to the Pope, but also to several cardinals, "amicis nostris de curiâ specialibus." Rymer's 'Fœdera,' vol. i. 1, p. 228. (*Vide* his second letter to the emperor).

[3] M. G. H., 'Const.,' ii. 200, May 1236. Frederick makes it quite clear that his immediate object is to deal with the rebellious cities (p. 267, l. 27 f.): "pacatis undique populis, sub devotione nostri nominis perseverant, nisi ut illud Ytalie medium, quod nostris undique viribus circumdatur, ad nostre serenitatis obsequia redeat et imperii unitatem. Nec in hoc providere tantummodo commodis nostris intendimus, sed super hoc crucis negocium directissime procuratur . . . relicto in tam nobile regione imperii nostri corpore lacerato et dissimulata tam veteri rebellione rebellium, assumere tantum negocium non possimus."

Gregory's answer to the summons of a diet at Piacenza was to appoint as his legate in Lombardy not the Patriarch of Antioch, as requested by Frederick, but the Cardinal Bishop of Palestrina, a native of Piacenza. Gregory wrote Frederick that he had specially selected him, and that Frederick could rely on his studying the honour of the Church and of the empire, as he had abandoned all for God, and Frederick must pay no attention to hostile remarks regarding him.[1] Gregory wrote at the same time to Herman, Master of the Teutonic Order, who had apparently expressed his fears that the Pope was about to take hostile action against the emperor. He hotly denied the suggestion, and defended the bishop's appointment.[2] That Herman should have written in this way is very significant, as he was a peacemaker whose services were constantly required both by the Pope and by the emperor. The appointment of the bishop needed a good deal of justification from the imperial point of view, for, as a result of his action, in the following month the control of Piacenza was taken out of the hands of the imperialists and given to a podesta from Venice, thus entirely frustrating Frederick's plans for a meeting there.[3]

A short time before this Frederick had addressed the Romans, complaining of their failure to send envoys to meet him on his arrival in Italy, and had reproached them with their failure to support him against the people of Milan.[4]

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[1] Epis. Sae. XIII., vol. i. 691, 10th June 1236. Gregory in his letter informed Frederick that, on the advice of his cardinals, he had decided to send the Bishop of Palestrina as his legate to Lombardy "de quo firmam potes fiduciam gerere, quod cum a se sua et suos propter Deum abdicaverit et semetipsum eius servitio totaliter dedicarit, ad ea dumtaxat studebit procedere, quibus honorem ecclesie possit ac imperii confovere, sicut ex ipsius operibus colligere poteris evidenter; et si qui aliud suggerant, imperialis excellentia auditum malevolis interdicat."

[2] L.c., 692. 10th June 1236.

[3] The authorities are quoted, H.-B., vol. iv. p. 904, note 2.

[4] L.c., p. 901, attributed by H.-B. to August 1236. "Ecce nunc Mediolanensium superbia sedem ab aquilone sibi constituit, non contenta solummodo quod Rome sit simulis nisi Romano imperio contradicat. Ecce hii qui tenebantur vobis, ut dicitur, tributa persolvere, vobis contumalias afferunt pro tributis. . . . Respondebitis forsitan quod ista magnalia reges et cesares faciebant. Ecce quod regem habetis et cesarem qui pro exaltatione Romani imperii personam exposuit, thesauros aperuit, laboribus

Frederick's attempts to get the active support of the Romans ran counter to the agreements made by him at various times with the Papacy regarding the patrimony, and could only be justified as a measure of self-defence in a contest with the Papacy.

Frederick gave further cause of offence by detaining a nephew of the ruler of Tunis, although, according to the Pope, he desired to go to Rome to be baptised.[1]

Angry correspondence followed between the Pope and the emperor. Frederick complained of the conduct of the Bishop of Palestrina, and charged the Pope with sending him a string of complaints instead of excommunicating the Lombards for their contumacious behaviour. As regards the complaints, Frederick promised to give redress if he found in any case that wrong had been done.[2] Gregory wrote a very angry reply. Frederick was one of those who dared "os in cœlum ponere." He defended the bishop; he had no evidence that the Lombards were contumacious. They had accepted the intervention of the Church, and he refused to accept Frederick's promise to amend any wrong done. He complained of Frederick's attempt to stir up the Romans, his lack of devotion, and his conduct with regard to the filling up of benefices in the Sicilian kingdom. He ended his catalogue of Frederick's sins by declaring that the most serious of all were the hindrances he put in the way of the recovery of the Holy Land by not allowing a crusade to be preached, and by not permitting contributions towards it from his subjects save with his assent.

In the course of his letter Gregory referred to Constantine's Donation and the subsequent transfer of the empire to the Germans. As regards the Donation he claimed that it was made with the consent of the Senate, and people not only of Rome but of the whole empire, as Constantine held it right that the vicar of the prince of the apostles who ruled over

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non pepercit. . . . vestre sollicitudinis studium excitamus, eisdemque super hiis que honorem Urbis et orbis respiciunt vota vestra plenissime conferatis;"

[1] Epis. Sae. XIII., vol. i. 694, 23rd June 1236. Letter from Gregory to Frederick.

[2] L.c., 692, 10th June 1236

the priesthood and the souls of men should also hold the lordship over the whole world and over the bodies of men. Subsequently it was the papal see which transferred the empire to the Germans, parting, however, with none of the substance of its jurisdiction. The power of the sword was given him by the Pope at the coronation when the emperor obtained his crown.[1]

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[1] L.c., 703, 23rd October 1236. p. 600, l. 38 f. "Unde nichil de tuo iure usurpasse, de tuo nichil, licet contrarium asseras, occupasse officio credimur, si nos, de quorum consilio te ad id in principio, medio et fine procedere, sicut pluries promisisti, decuerat, prompti nostrum summo creditori exolvere debitum invenimur.

Quare premissa . . . diligentius attendentes, illum, ut per eum nostrum impleremus ministerium, elegimus in hac parte ministrum, qui eo tibi et quibuscumque discordantibus minori posset haberi ratione suspectus, quo eius mens terrenis desideriis absoluta suis actibus fermenti minus ingereret odii vel amoris, qui se ipsum et sua relinquens in divini amoris altitudinem evolasset. . . . Nec enim locus originis recte contra eum in suspicionis argumentum inducitur, cum non bonitas hominis deformetur a loco, set potius loci malitia per hominem reformetur. . . . cui nichil posse credimus imputari, si eo presente sedata sint intestina bella Placentie, si alique civitates Lombardie, cladibus preliorum oppresse, ad pacis fuerint dulcedinem invitate. Quinimmo tibi ad infamiam reputatur, quod, ecclesia suo prefato mediante legato, pacem imperii dedigneris vel non patiaris potius reformari." He is, however, prepared to do justice if he can prove anything against him.

As regards the Lombards (p. 601, l. 41 f.), "Nec etiam nobis de obiecta eis contumacia constitit, ad quos pro facto imperii mandatum apostolicum, cui superba cervice restiterint, nullatenus emanavit; quinimmo compromissum in manus nostras venerabili fratre nostro . . . patriarcha Antiocheno procurante teque petente firmantes, . . ." As regards Frederick's answers and promises to give satisfaction (p. 602, l. 19 f.), "sicut non in principio, sic in fine non credimus, qui simili promissione delusos multoties nos dolemus. Indigne ergo super oppressionibus predictarum ecclesiarum et hominum regni, in quo nullus manum vel pedem absque tuo movet imperio, affirmativam nostre propositionis negativa ignorantie imperialis interimis, quibus consensum vel originme prestitisse . . . non solum scire set etiam plane potueris emendare, minime dubitaris."

He bids Frederick recall to mind how his great predecessor behaved with regard to the Papacy and how Constantine (p. 604, l. 25 f.) "una cum toto senatu et populo, non solum Urbis set in toto imperio Romano constituo, unanimi omnium accedente consensu, dignum esse decernens, ut sicut principis apostolorum vicarius in toto orbe sacerdotii et animarum regebat imperium, sic in universo mundo rerum obtineret et corporum principatum, et existimans illum terrena debere sub habena iustitie regere, cui Dominum noverat in terris celestium regimen commisisse, Romano pontifici signa et sceptra imperialia, Urbem cum toto ducatu suo, quam sparsis in ea pecuniis nobis turbare

After this letter one might have expected an immediate breach, but instead there was a very marked abatement of the tension. Notwithstanding Gregory's defence of the Bishop of Palestrina, he was replaced a month later by two other legates, and the Pope wrote Frederick six months later that he had done this on the representation of Herman, the Grand Master of the Teutonic Order, and of Peter de Vinea, the chief justice of the kingdom.[1]

Some time before this letter Gregory had again approached Frederick with a view to making a further attempt at a peaceable settlement, and the emperor had agreed to send Herman to negotiate, though with some hesitation, in view of the predecessor of the new legates.[2] When Gregory officially notified Frederick, he also wrote the Lombard cities belonging to the League, stating that Frederick had sent special envoys asking the Pope to assist in dealing with the matters at issue between him and the Lombards. In virtue of his office, the Pope could not refuse, and he accordingly advised and directed them to send their procurators armed with full powers to Mantua to meet the papal legates. He ended by assuring

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moliris, illius sequens exemplum qui absorbens fluvium non miratur, . . . nec non et imperium cure perpetuo tradidit, et nefarium reputans, ut ubi caput totius Christiane religionis ab imperatore celesti disponitur, ibidem terrenus imperator potestate aliqua fungeretur, Italiam apostolice dispositioni relinquens, sibi novam in Grecia mansionem elegit; de qua postmodum in persona prefati magnifici Caroli, qui iugum a Romana ecclesia vix ferendum impositum pia debere docuit devotione portari, sedes apostolica transferens in Germanos, predecessoribus tuis, sicut et in tua persona recolis esse factum, in consecrationis et inunctionis munere, nichil de substantia sue iurisdictionis imminuens, imperii tribunal supposuit et gladii potestatem in subsecuta coronatione concessit; ex quo iuri apostolice sedis et non minus fidei ac honori tuo derogare convinceris, dum factorem proprium non agnoscis."

[1] L.c., 707, 23rd May 1237.

[2] H.-B., vol. v. p. 33, March 1237, Frederick to Gregory. "Nam licet istorum legatorum (*i.e.*, the cardinal bishop of Ostia and the cardinal priest Thomas) sequentium fides et merita [non solum] apud Deum et homines, sed apud nos maxime longe discrepent a priori (*i.e.*, the Bishop of Palestrina), eadem tamen erat omnimodo legationis istorum forma cum prima." Frederick remarks in another part of the letter, "Quod enim sollicitudinis nostre laboribus suum divina potentia diebus nostris exaltat imperium . . . si subtiliter et efficaciter verum vellemus inspicere, major vobis ex hoc exaltationis materia deberet afferri quam nobis, ut pote cum in exaltatione Romani imperii Romana patenter exaltatur Ecclesia, . . ."

them that they would be in great danger if settlement of the matter were delayed.[1] The whole tone of the letter is different from anything we have found in the previous correspondence, and it appears to indicate a real change of purpose, for in the negotiations which ensued the contending parties seem very nearly to have arrived at a settlement on terms very satisfactory to the emperor.[2]

During the previous winter it had been very plainly shown that Germany, as a whole, was strongly on Frederick's side. In February 1237 Frederick succeeded in getting the princes to elect his younger son Conrad, a child, as king and future emperor. The election is remarkable in several respects. Among those who took part were three of the five great archbishops—namely, Mainz, Trier, and Salzburg,—Otto, the Count Palatine of the Rhine and Duke of Bavaria, the King of Bohemia, and the Landgrave of Thuringia. Thus the electors included some of Frederick's bitterest enemies of later years. In the election decree the transfer of the empire to the Germans is spoken of as "probabilis" and "necessarius." There is no mention of the Pope in connection with it, and by the form of words in which the princes announced the election, they appear tacitly to claim the right to elect the emperor without reference to the Pope. To prevent Conrad raising claims to govern independently of his father, he was till his father's death only to be king elect. After that he was to be their lord and emperor, and they would give him their advice and help towards obtaining the imperial diadem, with all the appropriate ceremonies. The electors claimed to have acted as the successors, so far as the imperial election was concerned, of the Roman senate. They declared that they had held an election in view of the great dangers of an interregnum, and had selected Conrad because of his descent from ancestors who had ruled the empire for many generations, and because his father's labours gave him a claim to the succession. This "decretum" shows how far the German princes were from sharing the papal view that relationship prejudiced a candidate for election, and it leaves no place for papal intervention at any stage before the coronation.[1]

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[1] Epis. Sae. XIII., vol. i. 708, 23rd May 1237.

[2] See Schirrmacher, 'Kaiser Friedrich der Zweite,' vol. iii. pp. 18 and 245 f., notes 15 and 16.

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[1] M. G. H., 'Const.,' ii. 329, "Decretum Electionis" of Conrad, February 1237. "Expectatio gentium Iesus Christus, quem mittendum sepe prophetarum oracula predixerunt, auferens sceptrum de Iuda et ligans ad vineam pullum suum, hoc est ad nove plantationis ecclesiam Romanum imperium alligans, et in ipsius clypeo tutelam nostre fidei positam manifestissime presagivit." He would be inexcusable "qui tam nobile fidei fulcimentum qualibet hominis provisione non adjuvat," and the responsibility therefore rests especially on those "ad quos divina sententia seu more maiorum vis et auctoritas provisionis huiusmodi pertinere noscuntur." The empire finally "apud unicam civitatem, licet pre ceteris regiam, non potuit contineri. Sed postquam etiam remotissimos terminos quadam girovaga peregrinatione lustravit, tandem apud Germanie principes non minus probabili quam necessaria ratione permansit, ut ab illis origo prodiret imperii, per quos eiusdem utilitas et defensio procurantur. Cum igitur nos Sifridum Maguntinum, . . . principes, qui circa hoc Romani senatus locum accepimus, qui patres et imperii lumina reputamur . . . nobiscum sollicita meditatione pensantes, quod tantum negotium . . . industria provisionis indigeat, illud etiam diligentius attendentes, quod post unius regnantis occasum interstitium temporis inter predecessoris obitum et plenum dominium successoris . . . grande posset imperio, sed et cotholice fidei maximum afferre discrimen, prevenire salubrius tempus elegimus. . . . Nam licet per vires, industriam et labores excellentissimi domini nostri Friderici Romanorum imperatoris . . . satis ad presens imperio sit provisum, quia tamen preeminentia dignitatis longioris vite beneficium regibus non concedit, . . . ipso vivente . . . de successoris nobis electione providimus, ne per eius interitum iustitia diminutionem status pateretur, imperium et tranquillitas interiret.

Et cum de substituenda persona diligenti meditatione nobiscum et sollicite pensaramus, preteritorum cauta provisio salubre consilium prebuit in futuris. Considerationibus etenim nostris occurrit, qualiter divi cesares progenitores imperatoris eiusdem, qui longis retro temporibus imperio prefuerunt, non solum ut domini iustitie solium inclite tenuere, sed tamquam patres imperii paterne dilectionis zelum ad omnes et singulos habuerunt . . . propter quod parentum laboribus fraudari filios nostri noluere maiores; nos ipsorum vestigiis laudabiliter inherentes, presentem imperatorem . . . in sobole sua simili retributione decrevimus honorare, ut dum filium eius ex nunc in futurum imperatorem nostrum post eius mortem assumimus, iuste pro imperio pater hactenus laborasse se gaudeat. . . . Sicque nos, inspirante nobis tam salubre consilium gratia summi Regis, ad voluntatem et preces eiusdem domini nostri imperatoris . . . vota nostra contulimus in Conradum antedicti domini imperatoris filium, regni Ierosolimitani legitimum successorem, eligentes ipsum ibidem in Romanorum regem et in futurum imperatorem nostrum post obitum patris habendum;" They promised to swear fidelity to him after his father's death, and "ad obtinendum solemniter imperii diadema sibi, prout de iure tenemur, consilium et auxilium impendemus." Henry's former election was set aside.

There is a monograph on this election by Hugelmann (Die Wahl Konrads IV. zu Wien im Jahre 1237). It perhaps underestimates Frederick's success.

After Gregory's letter of 23rd October 1236, his complaints of Frederick's conduct do not recommence till March 1238. During this period, after negotiations had broken down, the League forces were routed at Portenuovo in November 1237, and in consequence the League cities were prepared to make very large concessions. Negotiations, however, again broke down, according to Frederick, over questions regarding hostages and the imperial jurisdiction over the cities.[1] In January 1238, Frederick sent the Romans the carrocio taken from the Milanese at Cortenuovo, with a letter indicating a close connection between him and the city, the "urbs regia"; a challenge to the curia.[2]

In June 1238 the Pope wrote Frederick asking his consent to papal mediation between him and the Lombards. Frederick refused, but in August he himself sent an embassy to the Pope, of which we have conflicting accounts from Gregory and Frederick, each throwing the blame on the other for its failure.[3] After the mission had left Rome, Gregory drew up a number of detailed charges against Frederick, and he deputed certain German bishops to get Frederick's answer to these charges. His detailed replies are given in a report from the bishops of 28th October 1238. The charges are important, as they agree on all important points with the grounds on which Gregory based his excommunication of Frederick in 1239. There is one important omission. The last charge as given in the bishops' report to the Pope accuses Frederick of impeding assistance to the Holy Land by his quarrel with the Lombards, although the Church was prepared to give him effective help in making a satisfactory settlement. In the sentence of excommunication no reference is made to the Lombards.[1]

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[1] L.c., 252, August 1244, pp. 348 and 349. Frederick's account, which is in some detail, seems more probable than the story that negotiations broke down because he insisted on unconditional surrender.

[2] H.-B., vol. v. p. 162 f., January 1238. Frederick to the Roman senate and people. In this letter he writes: "Ab observatione quoque cujuslibet rationis intentio nostra discederet si nos quos Romani Cesaris fulgor illustrat Romanos expertes victorie romane tripudiis pateremur, si vos fructu negotii, quod vestro nomine gessimus, dum nos rebelles romani imperii sub romani nominis exclamatione devicimus fraudaremus; si ad urbem regiam regiminis nostri decus non deferremus et gloriam, que nos in Germaniam ad nanciscendum imperiale fastigium velut mater ab ulnis filium destinavit."

[3] For the Pope's request in June 1238 that Frederick would allow him to mediate between him and the Lombards, see Frederick's letter of July in W.A.I., vol. i. 351, from which it appears that the Pope must have written some time in June.

On the 6th August the Pope appointed Gregorio de Montelongo his legate in Lombardy, *vide* Felten's 'Life of Gregory IX.' p. 267, note 2. According to Frederick (M. G. H., 'Const.,' i. p. 295, l. 23 f.) he had sent a legation before this which according to him had arrived at a settlement with the Pope. That such a mission was sent appears also from a letter of the Pope's (Epis. Sae. XIII., vol. i. 620, 1st July, p. 652, l. 20 f.), but he and Frederick do not agree as to the result, nor as to the causes of its failure.

See also Frederick's account of the negotiations as given in the letter of the bishops (H.-B., v. p. 257). This was written very shortly after the mission, and was for communication to the Pope, and was not an encyclical for the general public.

While negotiations were going on both parties were preparing for war.

In October or November, Frederick married his illegitimate son Enzio to Adalasia, the heiress of two of the Sardinian "judicatures," and gave him the title of King of Sardinia, though the Church had long claimed the lordship of the island.[2] The Pope, on the other hand, got the Venetians and Genoese to enter into an alliance for nine years, during which time they undertook not to enter into any sort of agreement with the emperor saving with the Pope's consent.[3]

Just before the final rupture Frederick wrote the cardinals, who, according to him, shared equally with the Pope in all matters which he "proponit statuere, vel denunciando decreverit." He begged them to use their influence to prevent the Pope's issuing a sentence of deposition against him, and warned them that if he were attacked he would retaliate.[1]

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[1] H.-B., vol. v., 28th October 1238, p. 256. The last charge as given in the bishop's letter runs as follows: "Quod per eum (*i.e.*, the emperor) impeditur negotium Terre Sancte occasione discordie quam habet cum quibusdam Lombardis; cum parata sit Ecclesia dare opem et operam efficacem ut sibi et honori imperii super his que commissa sunt contra eum a Lombardis congrue satisfiat, et Lombardi ipsi ad hoc ipsum sint preparati:" In the sentence of excommunication the corresponding clause runs (l.c., p. 288, 20th March 1239): "Item excommunicamus et anathematizamus eumdem pro eo quod per ipsum impeditur negotium Terre Sancte et reparatio imperii Romanie."

[2] The Pope had written Adelasia (Epis. Sae. XIII., vol. i. 726, 30th April 1235), "volumus, ut de nostro consilio et mandato talem in virum recipias, qui et nobilitati tue gratus et nobis merito sit acceptus. . . ." L.c., 729, 31st May 1238. Adelasia had promised three years before to pay tribute, and had acknowledged the Pope's lordship, *vide* Cod. dep. Sardin. i. 357 doc. 76, and 347 doc. 57, quoted by Felten, p. 264, note 6.

Sardinia was divided into four judicatures, each under a ruler known as the "judex."

There was much correspondence in connection with the papal claims in the time of Innocent III.

[3] H.-B., vol. v. p. 1223 f., 3rd November 1239.

Frederick, according to his encyclical, also sent envoys to Rome just before the final breach, promising to give satisfaction for any wrongs done to the Church. Before the mission could arrive, Gregory ended negotiations by excommunicating Frederick.

The rupture appears to have been inevitable under the circumstances. Frederick was determined to make himself master of Italy north and south. Sicily and the south were already his, and provided him with the funds he required, but for really efficient armies he needed troops from Germany, and for this purpose it was necessary to be able to depend on the passes of the Alps being kept open for the passage of his troops. On several occasions the Lombard League had been able to close them and, for the time being, effectually to block his schemes. The destruction of the League was thus essential from his point of view. On the other hand, since

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[1] H.-B., vol. v. p. 282, 10th March 1239. Frederick, addressing the cardinals, writes: "Cum sit Christus caput Ecclesie, et in Petri vocabulo suam fundaverit Ecclesiam supra petram, vos Apostolorum statuit successores ut Petro pro omnibus ministrante, vos qui estis candelabra Ecclesie supra montem, non sub modio constituti, revera omnibus qui sunt in domo Domini ex effectu bonorum operum luceatis, nec a publica mundi lingua et conscientia generali vos subtrahere intendatis; cum ad singula que presidens Sedi Petri proponit statuere, vel denuncienda decreverit, equa participatio vos admittat, nisi ipsius religionis Ecclesie status et zelus effervescens evitandi scandali generalis cautelam vobis suggesserit ad futura. Quis enim non miretur et stupeat, quod tot venerabilium patrum congregatione munitus Ecclesie generalis sedens in solio (utinam justus judex) inconsulte velit procedere, ac suis motibus excandescens, in Romanum intendit principem, advocatum Ecclesie, ac ad predicationem Evangelii stabilitum, sententiam depositionis statuere et ob favorem Lombardoreum rebellium exercere spiritualem gladium, si dicere liceat, minus juste;" He warns the cardinals "oportet nos defendendo gravius offendere resistentes, salva in omnibus Ecclesie sanctitate quam cultu sacro et debita reverentia corde et ope veneramur."

1059, when Robert Guiscard and Richard of Capua acknowledged the Pope as their liege lord, the curia had possessed in the Normans a valuable counterpoise to the domination of the Germans in the north. There had been friction at times, sometimes very serious friction, for the Normans were difficult vassals, but on the whole the Norman Government of Southern Italy and Sicily had been a valuable asset to the Papacy. This ceased when Henry VI. became king, and joined in his person the government of the empire and of the kingdom. It was to prevent a recurrence of this union that Innocent rejected Frederick as a possible emperor till his appointment seemed less dangerous to the Church than Otto's government. Innocent did what lay in his power to minimise the risk by inducing Frederick to promise to give up the kingdom of Sicily to his son, to be governed by a guardian approved by the Pope. Frederick having succeeded in escaping from his promise, Gregory attempted to take advantage of Frederick's first excommunication to diminish his power in Sicily, but did not succeed. This failure made it all the more important for the Papacy to protect the League from destruction in order to secure support in the defence of its temporal dominions. At bottom this was a spiritual as well as a temporal question, as it might well be doubted whether a Roman bishop, at the mercy of a German emperor, could still remain the spiritual head of Christendom.

It was important for both parties to have public opinion on their side, and in this respect Frederick had one advantage over his great opponent, as he could make out for himself a strong case of self-defence against rebellious vassals of the empire, supported by the Pope. On the other hand, it would have been difficult for the Pope to make out a convincing case, that in supporting the Lombards he was really acting in defence of his spiritual powers, and it was no doubt for this reason that Gregory made no direct reference to them in stating the grounds for Frederick's excommunication. The Papacy was deeply interested in the struggle between the Lombards and the emperor, yet it was constantly seeking to be treated as an impartial judge, prepared to do equal justice to both parties; thus placing itself in a false position of which Frederick took full advantage in his letters.

Sentence of excommunication was given on the 20th March 1239. Sixteen grounds are given, of which eleven relate to Frederick's behaviour in his Sicilian kingdom.[1] In three of these charges breaches are alleged of the treaty of 1230. Other charges relate to Frederick's attempts to stir up the Romans against the Pope, and to his occupation of Sardinia and of other lands belonging to the Church. There is also a general charge that Frederick put obstacles in the way of relieving the Holy Land and of helping the Greek empire. It is significant, as already pointed out, that no mention is made of the Lombards, as in the corresponding charge sent some months before to the German bishops.[2]

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[1] H.-B., vol. v. p. 286 f., 20th March 1239. Of the grounds of excommunication, sixteen in number, eleven referred to Sicily, and in three of these a breach of the conditions of the peace in 1230 is alleged. The other charges are: "(1) Pro eo quod contra Romanam Ecclesiam seditionem movit in urbe, per quod intendit pontificem et fratres a sua sede repellere. (2) Pro eo quod. . . . Prenestinum episcopum, Apostolica sede legatum, ne in sua legatione procederet . . . in Albigensium partibus . . . per quosdam fideles suos impediri mandavit. (3) Pro eo quod nepotem regis Tunici venientem ad Ecclesiam Romanam pro suscipiendo baptismatis sacramento, detinet nec venire permisit. (4) Quod terras Ecclesie, scilicet Ferrariam . . . et terram Sardinie occupavit, contra juramentum quo super hoc Ecclesie tenetur temere veniendo. (5) quod per ipsum impeditur negotium Terre Sancte et reparatio imperii Romanie." There is no express reference to Lombardy.

The Pope adds to the grounds of excommunication: "Porro pro omnibus et singulis supradictis pro quibus dictus Fredericus a nobis diligenter fuit admonitus et frequenter nec parere curavit, eumdem Fredericum excommunicationis et anathematis vinculo innodamus." He also declared: "Ceterum quia idem Fredericus de dictis et factis suis, multis clamantibus per universum quasi orbem quod de catholica fide recte non sentiat, est graviter diffamatus, nos dante Domino super hoc loco suo et tempore procedemus, secundum quod in talibus requirit ordo juris." He also announced: "Super oppressionibus vero et aliis gravamiribus nobilium, pauperum, viduarum, orphanorum et aliorum de regno, pro quibus idem Fredericus alias juravit stare mandatis Ecclesie, ipsum intendimus admonere et in ipso negotio, dante Domino, procedemus sicut juste fuerit procedendum." Frederick is called "dictus imperator," or only Frederick, and the Pope released all bound to him by an oath of fidelity so long as he remained under excommunication.

[2] See also Epis. Sae. XIII., vol. i. 741, 7th April 1239, directing the publication of the sentence of excommunication. Gregory to the Archbishop of Rouen and his suffragans. Evidently a copy of an encyclical. With regard to Sicily, Gregory writes (p. 638, l. 6 f.):

Frederick asserted over and over again that his quarrel with the Lombards was the real cause of his rupture with the Church, and whether it was the only cause or not, it is difficult to believe that it was not the principal cause, and that other differences could not have been peaceably settled.

A notable feature in the proceedings that followed Frederick's excommunication is the appeal to public opinion on both sides. A month after his excommunication the emperor issued an encyclical to show his innocence to princes and peoples alike. He told at some length the story of his relations with Gregory, and of the injustice he had suffered at his hands. He accused him of having written the Sultan not to cede to him any of the holy places. He also accused him of asking for his support for Viterbo against the Romans, while he secretly wrote to the Romans that his (Frederick's) action was taken without the Pope's knowledge or desire (preter suam conscientiam et mandatum). He spoke of his unjust decisions in Lombard affairs, his support of the rebels, and his unfair demand that he should place himself unreservedly in the Pope's hands. He mentioned the Pope's sudden change of front in the negotiations in the autumn of 1238, and how he had excommunicated him on hearing that he was prepared to give immediate satisfaction. He had excommunicated him against the advice of the wiser cardinals, and had prevented Frederick's mission getting to Rome.

It was impossible to accept as judge one who had shown himself a mortal enemy, and who had favoured by word and deed rebels against the empire; he attributed Gregory's hostility to his refusal to allow Enzio (the natural son of Frederick) to marry his niece. He had also shown himself unworthy of the exercise of pontifical authority by the sup-

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"et sic totum fere regnum, quod est speciale patrimonium beati Petri, pro quo iuramento fidelitatis apostolice sedi tenetur et ipsius ligius vassallus existit, quantum in eo est, in favillam quasi et cinerem iam redegit; quod si postquam monitus fuerit a nobis, non duxerit corrigendum, nos super hoc actore Domino, sicut expedire videbimus procedemus."

port he had given to the Milanese, mostly heretics. While Frederick acknowledged the papal authority, to which all Christians are subject, Gregory had shown himself unworthy of office.

He begged the cardinals to call a General Council, to be attended by secular as well as ecclesiastical dignitaries, including his envoys and those of other princes; this Council he would attend himself, and was prepared to prove all he had said, and even more.

It was, Frederick stated, the Lombard affair that really influenced the Pope, though he dared not make this public because of the scandal it would cause. He had gone so far as to offer to let him have for his own use all the tithes levied for the Holy Land, if he would let him settle it. Gregory had personally sworn to assist the Lombards against the emperor.[1]

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[1] M. G. H., 'Const.,' ii. 215. Encyclica accusatoria contra Gregorium IX., 20th April 1239. With regard to the Pope's unworthiness, he writes (p. 296, l. 36 f.): "Alias nobis per talem, quem merito nostrum iudicem non habemus, nullam posse fieri reputamus iniuriam, utpote cum se prius inimicum capitalem quam iudicem nostrum et opere fuerit professus et verbo, rebelles nostros et hostes imperii publice confovendo. (18) Indignum preterea se tanti cohercione principis et generaliter qualibet pontificalis auctoritate iudicii reddidit, dum Mediolanensem civitatem, que pro maxima parte testimonio religiosorum quamplurium fidedignorum inhabitatur hereticis, contra nos et imperium manifesto favore tuetur . . . (19) Illum habere preterea Christi vicarium et successorem Petri ac dispensatorem animarum fidelium indigne fatemur non ob dignitatis iniuriam, set ob persone deffectum, qui dispensationes cum fratrum deliberatione maxima concedendas in camera sua more mercatoris cuiuslibet in libra mercationis appendit, celatis fratrum consiliis, cum quibus secundum ecclesiasticam disciplinam deliberare tenetur, existens sibi bullator et scriptor et forsitan etiam numerator. . . . (21) Itaque non miretur universalis ecclesia nec populus christianus, si nos talis sentencias iudicis non veremur, non in contemptu papalis officii vel appostolice dignitatis, cui omnes ortodosse fidei professores et nos specialius ceteris subesse fatemur, set persone prevaricationem arguimus, que se solio tanti regiminis monstravit indignam. . . . (p. 297, l. 30 f.), ecce quod sacrosancte Romane ecclesie cardinales per sanguinem Iesu Christi et sub attestatione divini iudicii per nuncios nostros et litteras attestamur, ut generale concilium prelatorum et aliorum Christi fidelium debeant evocare; nunciis etiam vestris et reliquorum principum accersitis, in quorum presencia nos ipsi presentes cuncta que diximus sumus hostendere et probare parati, et his etiam duriora."

He warns the princes that they may expect the same treatment (p. 298, l. 18 f.). "Facilis etenim aliorum

The Pope's reply followed two months later, and when it came, it was even more violent. Frederick is the beast full of blasphemy of the Apocalypse, a fabricator of falsehoods, a vessel filled with abominations, a supporter of the wicked, one who delights to be called the forerunner of Antichrist.

Gregory told the story of Frederick's protection by the Church, in Sicily during his childhood and later on in Germany, and of his own friendship. He repeated the old charges in connection with the crusade, the invasion of the papal patrimony, and his misdeeds in Sicily, which he had almost reduced to ashes by his greed for money, and where he had endeavoured by bribes to get his way in spiritual matters. As regards Lombardy, the emperor had brought his troubles on himself by using force, notwithstanding the Pope's warning, and even when he had gone there without any military force, he had spoiled his case by taking sides. So far had the Pope been from putting difficulties in his way that when Frederick entered Lombardy with armed forces, he had suspended the interdict, during the time of Frederick's stay, from any town subject to it. He defended again as in previous letters his appointment of the Bishop of Palestrina as legate. He had never offered Frederick the tithes, and denied as figments Frederick's tales about Viterbo and other places, while as regards Enzio and his niece, it was Frederick who desired the marriage. He had shown his heretical tendencies by denying the Church the power of binding and loosing, and evidence

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omnium regum et principum humiliatio creditur, si cesaris Romani potencia, cuius clipeus prima iacula sustinet, conteratur. Hec est namque causa pro vero, videlicet de Lombardis, que cor pape pungebat et urebat intrinsecus, licet ipsam foris educere propter vestrum et audientium omnium scandalum non auderet. Pro qua nobis per specialem nuncium suum fide dignissimum, cuius ad hec testimonium invocamus, oretenus exprese promisit, quod si negocium Lombardorum in eius arbitrio poneremus, nedum quod in aliquo magnificentiam nostram offenderet, verum etiam tocius orbis decimas Terre Sancte necessaitatibus consecratas nostris utilitatibus applicabat. (25) Nec est mirum; instantibus etinem et accutis Lombardorum aculeis pungebatur, quibus, prout per aliquorum prelatorum confessionem accepimus, contra nos et imperium corporale prestitit sacramentum, cum ipsos, peregrinantibus nobis in partibus Syrie pro servicio Iesu Christi, transmisit in Regnum."

would be forthcoming that he had declared the whole world to be deceived by three impostors—Christ, Moses, and Mahomet,—and that he had denied the possibility of the virgin birth.[1]

Frederick replied at once to the cardinals, protesting his orthodoxy, and defending his refusal to allow Gregory the power of binding and loosing, as he was no true pontiff.[2]

Meanwhile Gregory made preparations to carry the war into

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[1] Epis. Sae. XIII., vol. i. 750. Gregory to the Archbishop of Rheims and his suffragans, 12th July 1239. He begins his letter by an attack on Frederick, "Ascendit de mari bestia blasphemie plena nominibus . . . os suum in blasphemias divini nominis aperit. . . ." With regard to the origin of his troubles in Lombardy, the Pope remarks (p. 648, l. 34 f.): "Qui etsi in Lombardiam famulis stipatus inermibus accessisset, quia tamen consilii fidelis oblitus in partem Cremonensium cedens actor factus est scismatis, scissamque in discordias Lombardiam fortius scindere et Mediolanenses a se terroribus et minis abigere studuit, quos cum adversa parte ad unitatem trahere potius debuit in funiculis caritatis, non est quod nostre imputetur innocentie, si spe frustratus in Apuliam rediit." With regard to Frederick's assertion that Gregory could not place him under excommunication, the Pope pointed out that he thus implicitly denied the power of Peter and his successors to bind and to loose (p. 653, l. 34 f.). "Set quia minus bene ab aliquibus credi posset, quod se verbis non illaqueavrerit oris sui, probationes in fidei victoriam sumt parate, quod iste rex pestilentie a tribus barrattatoribus, ut eius verbis utamur, scilicet Christo Iesu, Moyse et Machometo, totum mundum fuisse deceptum, . . . insuper dilucida voce affirmare vel potius mentiri presumpsit, quod omnes illi sunt fatui, qui credunt nasci de virgine Deum, qui creavit naturam et omnia, potuisse;"

[2] H.-B., vol. v. p. 348 f. Frederick answers the papal charges: "Cardinales adhortatus ut summum pontificem a suis illicitis motibus compescant; alioquin timeant ne ad ultiones cesareas ipse procedere cogatur."

Frederick commences his letter by comparing the Papacy and the empire to the sun and moon: "ut et si se multotiens ex obliquo respiciant, unum tamen alterum non offendit; immo quod est superius inferiori suam communicat claritatem."

Frederick gives a confession of faith, and declares as regards Mahomet, "corpus in ære pendere didicimus, obsessum demonibus, animam Inferni cruciatibus deditam." Frederick is astonished that "vos qui estis Ecclesie fundamenta, columne, rectitudinis assessores, Petri urbis senatores, et orbis cardines, non flexistis motum judicis fulminantis . . . Revera imperialis felicitas papali semper impugnatur invidia. . . . et quia injurie non sunt transitorie, qua nostre majestati jugiter inferuntur, et animum super iis non lenirie possumus, nec debemus utique nostram potentiam relaxare, cogimur ad vindictam."

Winkelmann, in his 'Acta Imperii Inedita,' 355, gives a somewhat different version of this letter, but there appears to be no doubt that the above was drafted for Frederick whether it was actually sent to the cardinals or not.

Frederick's territories, and the Venetians undertook to provide a certain number of ships for the seizure of the kingdom of Sicily. The Pope, on the other hand, gave them certain fiefs and privileges in the kingdom, and undertook that the Church would provide for the fulfilment of this agreement in case it made over the "regnum" to any one else. He also provided that Venice should be included in case the Church and Frederick made peace.[1]

Gregory appealed to Louis IX. to help him against Frederick. In his letter he repeated his charge of heresy in connection with the question of the virgin birth.[2] We have not got Louis' reply, but we know from a letter that he wrote the emperor that he refused to give any assistance.[3] Attempts were also made to stir up a crusade against Frederick, as, for instance, in Hungary.[1]

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[1] Epis. Sae. XIII., vol. i. 833, 23rd September 1239. Agreement of Venetians to supply galleys for the conquest of Sicily, &c. L.c., 834, 24th September. Grant of fiefs to the doge and "commune" of the Venetians in places in the Sicilian kingdom occupied by them. "tibi et per te communitati predicte, postquam ea fuerint occupata, in feudum perpetuum concedemus." L.c., 835, same date, undertaking that these pacts are to be observed by any person to whom the kingdom may be made over by the Papacy. L.c., 838, same date. A promise that should peace be made with Frederick the Venetians would be included.

[2] H.-B., vol. v. 457, 21st October 1239. Gregory to Louis IX. "Hinc est quod nos Christi qui pro salute hominis descendens e celis ad predicandum evagelium in universum mundum transmisit apostolos, exemplo compulsi, ad te precipuum, te carissimum Ecclesie filium, te speciale subsidium, te refugium singulare, venerabilem fratrem nostrum episcopum Penestrinum . . . officio sibi legationis commisso pro defensione fidei pro qua laborare tenetur quilibet qui christiana professione censetur, dirigimus et per eum in tante necessitatis articulo tui brachii auxilium invocamus. Cum enim pugnare pro eripienda Terra Sancta de manibus paganorum sit perpetue vite meritorium, multo majoris meriti esse creditur si eorum qui exterminium fidei in qua salus totius mundi consistit et Ecclesie machinantur generalis excidium, impietas expugnetur. Speramus autem et pro firmo tenemus quod Jhesu Christo qui pro redemptione tua servi formam accipiens proprium sanguinem crudeli perforatus lancea fundere et in cruce mortis voluit subire tormentum, qui diebus istis a dicto F. eum asserente in utero Virginis minime descendisse, crudeliter in se et membris suis ac multipliciter impugnatur, curabis tanquam atlete dominicus potenter assistere, et honorem Christi cui nulla debes vel potes ratione deesse et Ecclesie sponse sue, bonum statum fidei et amicum fidelium totis viribus conservare studebis."

[3] L.c., vol. vi. p. 18 f. End of 1241. "Penestrinum episcopum et alios legatos Ecclesie, in prejudicium vestrum volentes subsidium nostrum implorare, manifeste repulimus, nec in regno nostro contra majestatem vestram potuerunt aliquid obtinere."

The papal party in Germany endeavoured to induce some foreign prince to stand as a candidate for the empire, but no one could be got to come forward.[2]

Frederick, on the other hand, wrote early in 1240, in answer to a letter from the Archbishop of Messina, that he had tried by humility to obtain the Pope's favour, but as this had failed he was resolved now to adopt a different course, and to recover from the Pope the lands long held by the empire.[3] He justified his action to Henry III., and gave an account of the machinations of the Pope, who had stirred up rebellion in the March of Treviso and in Ravenna.[4]

In April and May 1240 a number of German princes endeavoured to get the Pope to agree to the opening of peace negotiations, as Frederick had declared he was prepared "stare iuri,"[1] and negotiations commenced, but broke down, according to Frederick, because the Pope insisted on the Lombards being included in the truce.[2] Hereupon Gregory decided to call a General Council. Frederick at once wrote a letter of protest to the cardinal bishop of Ostia against a council summoned by an enemy, both of the empire, and of himself. He suspected the purpose was not peace, but discord, inasmuch as it was not called by the cardinals or by some person mutually agreed upon. Before it was called, peace negotiations should have been instituted.[3] In September, Frederick issued an encyclical explaining why negotiations had broken down, and refusing to permit the holding of a council called by Gregory, also stating that he was determined not to allow a truce to the Lombards.[4] Gregory's reply was a second summons for a General Council. Frederick maintained his opposition, and towards the end of the year he wrote Louis IX. explaining his reason for preventing the holding of the council while declaring himself at all times ready for the peace which the Pope had refused on account of the Milanese.[5] In February 1241 he gave orders to all his "fideles" not to allow any clerics to come to the council called by the Pope, and if necessary to capture them.[1]

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[1] L.c., vol. v. 1095, 12th February 1241. Gregory to his subdeacon, John de Ciudale. "Cum tibi duxerimus injungendum ut contra Fridericum in Ungarie regno verbum crucis proponeres et nonnulli in dicto regno in Terre Sancte subsidium susceperint signum crucis, ex quo impedimentum non modicum tuo proposito generatur, nos devotioni tue ut vota crucesignatorum ipsorum in defensionem Ecclesie contra Fridericum eumdem, si eorum ad id consensus accesserit, commutare valeas."

[2] Hoefler Albert v. Beham, &c., p. 22, 5th September 1270. Letter from Albert to the Pope. "Cæterum, Pater Sancte! scire cupio Sanctitatem vestram, ita tamen, pie pater! ut sepultum maneat in æternum, quod electio regis in Alamannia retardatur, quia junior rex Daciæ a proposito omnino recessit, patre suo dissuadente et lapsu regis Bohemiæ faciente, fit tamen novus tractatus super hos circa ducem Austriæ et filium sanctæ Elizabeth, et quid possit apud illos inveniri, adhuc ignoramus, et si secretissimum cordium principum Alamanniæ, spiritualium et secularium, scire cupitis et de omnibus ad ecclesiæ honorem informari, quodsi et per vos, tantum sine electione principum et tantum de bona voluntate ipsorum novum cupitis regem creare" to bid the Bishop of Strassburg to send him "nobilem virum Henricum de Neiffe."

[3] H.-B., vol. v. p. 707 f. Frederick to the Archbishop of Messina, 2nd February 1240. Frederick announces that "Cum autem non fuerit in sede Petri qui patientie nostre longanimitatem et innocentie causam attenderet, qui servitiorum nostrorum et munerum memor existeret . . . viam alteram eligentes proposuimus in manu forti procedere; cum apud ipsum nobis humilitas nil prodesset, disposuimus firmiter irrevocabili proposito mentis nostre ducatum et marchiam et terras alias que longo tempore imperio subducte fuerant et subtracte, ad manus nostras et imperii revocare."

[4] L.c., p. 840 f.

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[1] M. G. H., 'Const.,' ii. 225-232. Letters of a number of German princes, ecclesiastical and secular, April and May 1240.

[2] L.c., 233, 13th September 1240, p. 319.

[3] H.-B., vol. v. p. 1028 f., end of August 1240. Frederick to the cardinal bishop of Ostia. "Nuper enim audivimus, unde justissima ratione movemur, quod nobis excogitati consilii, qualitatis ejus et temporis prorsus ignaris, per summum pontificem adhuc publicum hostem imperii et nostrum capitalissimum inimicum pro pacis negotio, licet hoc vocationis emisse forma non exprimat, concilium convocatur; illo simpliciter annotato quod pro magnis et arduis Ecclesie Romane negotiis cismarininorum prelatorum et principum synodus evocetur. Verum quecumque sit causa vocationis hujusmodi litteris ad publicam famam tacita vel expressa, scitis tamen suspicionis nostre causam perlucide et indicia manifesta quod non pro nobis nec pro pace, sed contra nos et pro discordia potius tale concilium convocatur, dum non a vobis vel saltem communiter electe persone, sed ab inimico nostro et nonnulli nostri culminis inimici vocantur. Prius igitur tractari pax inter nos debuit et tractata firmari quam a tam remotis partibus pacis suffragia quererentur. Nos enim in hoc inimicorum nostrorum qui de primo vel ultimo se offerunt, superbiam non timeremus, si cum eo pacem habebimus quem patrem habere, si datum esset desuper, deberemus in terris."

[4] M. G. H., 'Const,' ii. 233, 13th September 1240.

[5] H.-B., vol. v. p. 1075.

Gregory had hired ships from the Genoese to take to the council those wishing to attend. Frederick's fleet attacked and defeated the Genoese, and a number of dignitaries of the Church, including several cardinals, were captured.

A remarkable feature in the years that succeeded Frederick's excommunication is the small effect that it apparently had on the laity. Notwithstanding the general promulgation of the sentence of excommunication and the charges of heresy published against the emperor, as we have seen not even a pious king like Louis IX. could be induced to support the Pope.[2] On the 22nd August Gregory died.

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[1] M. G. H., 'Const.,' ii. 234, end of 1240.

Frederick speaks of the council summoned by Gregory as a "synodum generale," p. 321, l. 26-7.

[2] Although Henry III. and Louis IX. gave no assistance themselves to the Pope, they did not prevent the publication of the sentence of excommunication by their clergy, nor did they prevent the clergy from giving pecuniary contributions to the papal cause.

CHAPTER IV.

FREDERICK II. AND INNOCENT IV.

After the death of Gregory IX. there was a long vacancy in the papal See, broken only for a few days by the election of Celestine IV. on the 25th October 1241. He died on the 10th November following, and it was not till June 1243 that the vacancy came to an end by the election on the 25th of that month of Innocent IV., a Genoese of the Fieschi family. Soon after his election, Frederick wrote him announcing the despatch of an embassy.[1] Negotiations commenced but broke down in September. On the 23rd of that month Innocent wrote Gregory de Montelongo, his legate in Lombardy, that the emperor had asked him to enter into peace negotiations, and he had agreed as a true lover of peace and as Frederick would, after his usual fashion, have defamed the Church had he not consented. He had accordingly sent a "forma pacis" laying down conditions from which the Church, its faithful adherents, and the emperor would all have benefited, but Frederick would not accept them, and sent in his turn envoys with proposals inacceptable to the Pope. Innocent directed his legate to inform the adherents of the Church that he would only re-establish peace on terms satisfactory (expediens) to the Church and its adherents.[2] Negotiations began again, but while they were going on active hostilities recommenced, as Cardinal Rainer, who had been appointed by Innocent Bishop of Viterbo, succeeded in recapturing it from the Imperialists.[1] Later on negotiations were resumed, but made no progress till, at the suggestion of Louis IX., Raymond of Toulouse was released from excommunication to enable him to be an intermediary between the Pope and the emperor.[2] Conditions of peace were now at last drawn up, and on the 28th March Frederick gave his assent to all that might be done by Peter de Vineis and Thadeus of Suessa to carry out these provisions. Among other conditions it was provided that Frederick was to let all the world know that his disobedience to the order of excommunication was not due to contempt of the keys, but to the fact that he was advised that till the order was formally communicated to him he was not bound by it; that he now recognised his error, and that he knew and believed that the Pope, even if a sinner, had full power over the emperor and over all other Christians in spiritual matters. He was to submit to the orders of the Church as to the atonement to be made. He was also to give such compensation as might be ordered by the Church for wrongs done to it, saving always his rights and honours and the maintenance intact of his empire and kingdom. So far as those were concerned who had taken the side of the Church after his excommunication, their offences were all to be forgiven, whether committed before or after that time. In the case of those at war with him at the time of his excommunication (*i.e.*, the Lombards), all offences committed after that date were to be forgiven. So far as offences committed before that date were concerned, the emperor would accept the decision of the Pope and of the cardinals, to be given within a time to be fixed by the Pope.[3] The specially important points, so far as we are here concerned, are the unqualified admission of the Pope's right to excommunicate and the emperor's duty to submit; the distinction between the Lombards and other enemies; and the submission to the Pope's decision of the offences committed by the Lombards prior to Frederick's excommunication. As we shall presently see, this matter had been considered before the terms were agreed, and they are not fully intelligible apart from Frederick's account of the negotiations before the settlement was made.

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[1] M. G. H., 'Const.,' ii. 239, 26th June 1243.

[2] Epis. Sae. XIII., vol. ii. 22, 23rd September 1243; see also Win. Ac., i. 705, 22nd June 1244, to the podesta council and people of Mantua. One of the conditions of peace proposed by Innocent ran as follows (M. G. H., 'Const.,' ii. 240): "Item hoc autem sciat princeps, quod omnes amicos et adherentes ecclesie vult ecclesia in pace ponere ac plena securitate gaudere, quod nusquam hac occasione possit subire aliquod discrimen."

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[1] Win. Ac., i. 374, 1243.

[2] Epis. Sae. XIII., vol. ii. 45, 12th December 1243. Letter of Pope to Louis IX. informing him that he had at his request taken the Count of Toulouse into favour. It would appear from Frederick's letter about the end of 1243 (H.-B., vol. vi. p. 146) the object was to enable him to act as negotiator for Frederick with the Church.

[3] M. G. H., 'Const.,' ii. 247 of 28th March 1244, is the "facultas" given by the emperor to his envoys, Peter de Vinea and Thadeus of Suessa; 248 of the same date is the authority given

Peace now seemed secured, but very soon difficulties arose as to the execution of the terms agreed on, and in the end of April Innocent wrote the Landgrave of Thuringia (Henry Raspe) that Frederick had chosen to withdraw (resilire) from his oath rather than to obey.[1] A few months later Frederick issued an encyclical letter giving his version of the negotiations subsequent to the election of Innocent and up to the time of his flight to Genoa. The letter was an open letter, and any incorrect statements could at once be challenged.

According to Frederick he was prepared to comply with all the conditions laid down, but the Pope refused, and put

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to the above and to the Count of Toulouse to swear on his behalf; 246 of 12th March 1244 contains the terms of the "satisfactio" to be given by the emperor. With regard to Frederick's disobedience in the case of his excommunication, article 2 provides: "Super contemptu clavium scribet dominus imperator generaliter per totum orbem, quod in contemptu ecclesie et potestatis ecclesiastice sententiam latam per dominum G. predecessorum suum non comtempsit." He was advised by the prelates of Germany and Italy that he was not bound by it until "sibi denunciaretur." "Profitatur tamen et recognoncit bene, quod deliquit in hoc, non servando, et male fecit, cum bene sciat et credat fideliter quod tam super eum quam super omnes christianos, reges et principes, clericos et laicos, habet summus pontifex, etiamsi quod absit peccator existat, quod Deus avertat, in spiritualibus plenitudinem potestatis."

In article 4 the words are, "Iurabit precise stare mandatis domine pape et ecclesie; salva tamen sint ei honores et iura sua quoad conservacionem integram sine aliqua diminucione imperii et regnorum suorum." Thus the provisions of the "satisfactio" did not enable the Pope to deal with the "regalia" and "jura" claimed by Frederick in Lombardy.

[1] Epis. Sae. XIII., vol. ii. 63, 30th April 1244. After Frederick had, by his envoys, given an oath to obey the orders of the Church, "Super omnibus articulis, pro quibus per pie memorie Gregorium papam . . . fuit vinculo excommunicationis astrictus . . . non post multos dies elegit resilire potius quam parere."

off his absolution because the emperor would not submit unconditionally for his decision the question of his rights and regalia in Lombardy. The Pope insisted on the immediate return of all lands to which the Church was entitled, while other matters were to be reserved for his further consideration. Frederick's envoys demurred, as meanwhile Frederick's absolution would be in abeyance while he was partially disarming himself. They made various suggestions to safeguard him and to prevent his absolution being unreasonably withheld; but though supported by the Emperor of Constantinople and the Count of Toulouse, they failed. Though it was not openly given out yet, it was owing to the Lombard question they failed. This was no fault of the emperor's, as the matter had been fully discussed before the "forma satisfactionis" had been finally settled. The Pope had, before that was done, constantly pressed that the Lombard question should be submitted to him unconditionally, as had been done in Gregory's lifetime. It was pointed out that at that time the Pope and the emperor were friends, and, moreover, since then the danger of such submissions to the Church had become apparent. The Pope later on suggested to omit provisions regarding the release of the Lombard prisoners, and the giving by them of an oath of fidelity. Frederick's envoys thought that the Pope meant, if this were agreed, to effect his object by means of another clause providing that peace should be given to the Lombards, and they accordingly made it plain that this clause did not cover the release of the prisoners, and the clause was in the end left as it finally stood in the "forma satisfactionis," as its meaning had been made plain in the course of the negotiations.

After the "forma satisfactionis" had been agreed, the Pope, at the request of the Milanese and other Lombards, again pressed for the unconditional submission of their quarrel to himself and to the Church. This the envoys would not agree to, specially having regard to the great partiality shown by the Pope to the Lombards and to their cause. The Pope then demanded the restitution of the lands (claimed by him) without any assurance or promise that absolution would be given to the emperor. Frederick set himself to consider all possible means by which a rupture could be prevented, and suggested that the Pope should go to some place in the Campania, where intercourse with the emperor by envoys (inter nuncios) would be easy, and where, if necessary, the Pope and emperor could meet. Frederick made a number of suggestions regarding the disposal of the Lombard question, but he would not put himself unreservedly in the Pope's hands, and he also insisted on safeguards for his absolution. Finally, the Pope, after refusing to go to the Campania, as he at one time had promised, declared his willingness to go to Riete. While, however, the nuncios and the cardinals were on their way there they heard of the Pope's flight on his way to Genoa (end of June 1244).[1]

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[1] M. G. H., 'Const.,' ii. 252, August 1244. Encyclical of the emperor regarding the treaty of peace. It is addressed (p. 341, l. 22) omnibus presentes litteras inspecturis. As regards the breakdown of the negotiations in April, Frederick remarks (p. 345, l. 1 f.): "Que cum parati essemus per omnia observare, dominus papa motus propterea, quia nolebamus in eum super negotio Lombardorum, de iuribus et regalibus nostris scilicet compromittere, negat et differt absolutionem nostram. . . ."

With regard to the negotiations before the rupture concerning the Lombards, Frederick writes (p. 346, l. 14 f.): "Tandem petiit (*i.e.*, the Pope) ut, quia ecclesia se ad hoc obligaverat Lombardis, quod non aliter nobiscum pacem faceret nisi poneret ipsos in pace, ut Lombardis, quos ecclesie adherentes vocabat, rebelles imperii pacem daremus et liberaremus captivos ipsorum." The Pope raised an altogether new question (p. 346, l. 21 f.): "Dominus papa primo de Lombardis conveniendis in curia imperii retulit questionem, quam Lombardi ipsi nullo tempore ante retulerant, cum ipsos de imperio et vassallos imperii fore constaret. Perniciosissimum exemplo preterea sepedicti nuncii fore dicebant, si de iurisdictione vassallorum imperii seu quorumlibet regum per dominum papam questio seu dubietas aliqua referetur."

Among other offers with a view to a settlement he mentions (p. 349, l. 9 f.): "Preter priores formas de negocio Lombardorum optulimus compromittere in dominum papam et fratres ita tamen quod prius omnino rumpatur promissio, protectio et quelibet obligacio habita inter eum et ecclesiam ex una parte et Lombardos ex altera, quia non deceret nec expediret nobis compromittere de negotio imperii, de quibus est questio inter nos et Lombardos, in protectorem rebellium Lombardorum, et eis super hiis specialiter obligatum; et hoc salvo iure et honore imperii, deducta expressim de compromisso pace Constancie, ita quod de ea servanda dominus papa et fratres nichil valeant arbitrari. . . ."

Another offer was made in the encyclical (p. 351, l. 10 f.), namely: "Quod super facto Lombardorum, retentis prioribus formis super declara-

Frederick, however, did not abandon all hopes of a settlement. Towards the end of 1244 he wrote two of the cardinals that he had implicit confidence in them, and was willing to trust them with the settlement, provided always that it did not diminish the dignity of the empire, and that the satisfaction he had to give did not involve serious injury to it (nec in satisfactione excallentia iniuriis propulsetur).[1]

In April he wrote the Pope he was sending the Patriarch of Antioch, as he was in hopes he would be able to restore peace.[2] Innocent wrote the patriarch on the 30th April that the Church was prepared for peace if Frederick accepted the conditions laid down in the form proposed by the Church and accepted by Frederick, released the captives, and restored the lands of the Church. This must be done before the council summoned by the Pope met.[3] On the 6th May he wrote the patriarch a second letter, in which he directed him to inform the emperor that as soon as Frederick gave satisfaction for his manifest offence and sufficient security for other cases, he would absolve him.[4] A few days before this (18th April) Innocent had in a sermon cited Frederick to appear before him at the Lyons Council.[5] In the beginning of June Frederick wrote the cardinals. In this letter he spoke of them as placed as lights on a mountain to shine to the nations, and as "fidei cardines" who rule the house of God. He assured them that he had been and still was prepared to submit his case to the Pope, saving his honours, rights, and dignities and those of his faithful subjects in the empire and in the regnum, provided the Pope would acknowledge him as his beloved

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cione facienda in aliis capitulis que in forma pacis devenerunt, si dominus papa committere voluerit totum negocium absolucionis Portuensi et Albanensi episcopis, nos stabimus dicto et daclaracioni ipsorum."

[1] L.c., 254, end of 1244, letter to the Cardinals of Porto and Albano.

[2] L.c., 256, April 1245. The patriarch also wrote Cardinal Raineirus, l.c., 257, April 1245.

[3] L.c., 258, 30th April 1245.

[4] L.c., 259. "Presentium tibi auctoritate mandamus, quatinus principi ex parte nostra denunties, quod, quam cito de manifestis offensis, pro quibus excommunicatus esse dinoscitur, satisfecerit et de dubiis sufficientem prestiterit cautionem, sibi faciemus munus absolutionis impendi."

[5] Nicholas de Curbio in his life of Innocent IV. Muratori, S.S., vol. iii. p. 592e.

son (filium caritatis paterne debita relatione cognosat). Fearing that he might be prejudiced by action taken in his absence, and that the Pope might consider that he could lawfully do as he pleased (dum credat sibi licere quod libeat), and use the spiritual sword against him "temporaliter," he was sending his servants fully empowered to appeal from any wrong done to him; first to the living God, and after God to the future Pope, a general Council, the German princes, and generally to all kings and princes of the earth and to Christians generally.[1]

Two very violent manifestoes were published about this time, originating in Italy, and apparently specially intended to influence the Council against Frederick. He was charged with seeking to make himself the equal or even superior of the Pope, and with desiring to appoint him. Sitting in the temple of God he required prelates and clerics to kiss his feet as if he were himself divine. He required others to call him "sacrum." Both manifestoes accused him of being surrounded by persons in his service who asserted that the soul of man perished with his body. Popular rumours were repeated that he had murdered three of his wives, and that he had procured the slaughter by Saracens of a number of Christians in the Holy Land.[2]

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[1] H.-B., vol. vi. p. 276, beginning of June 1245. Frederick addresses the cardinals, who "positi tanquam luminaria super montem lucetis in gentibus et velut fidei cardines regitis domum Dei." As he is afraid the Pope "credat sibi licere quod libeat, spiritualem contra nos gladium temporaliter exerceat et procedat in aliquo si dici liceat minus juste" and "Dubitantes verumtamen ne vel res inter alios acta contra jus scriptum juri nostro prejudicet," his envoys are authorised "ut a gravamine et iniquo processu patris ejusdem coram tam venerabile cetu patrum primo ad Deum vivum cujus nutibus attribuimus quicquid sumus, et postmodum ad futurum summum pontificem, ad generalem synodum, ad principes Alamannie, et generaliter ad universos reges et principes orbis terre ac ceteros christianos pro parte nostra libere valeant appellare."

[2] L.c., p. 278 f., end of June 1245. Among other charges, it is alleged in the first of these documents (p. 279): "Sed nec his contentus, molitus est quasi Lucifer in Ecclesie celum conscendere super astra celi, sponseque luminaria solium exaltare ac sedem ponere in lateribus aquilonis, ut esset similis, imo superior vicario Altissimi, dum papam creare gestivit, dum presules ac inferiores prelatos et clericos cepit instituere ac destituere in ecclesiis juxta velle; dum sedens in templo Domini tamquam Dominus facit sibi

The council summoned by Innocent to Lyons met in due course, and at the last meeting on the 12th July the Pope declared Frederick to be deprived of all his honours and dignities. All bound to Frederick by oaths of fidelity were released from them in perpetuity, and were forbidden to obey him as emperor or king. Innocent directed those who had the right of electing the emperor freely to chose a successor. He and his cardinals would decide later on how to deal with the kingdom of Sicily. The Pope gave a brief account of events up to the time of the oath given by Frederick's envoys on his behalf.[1] It appeared, according to Innocent, from subsequent events that he had sworn rather with the object of deceiving the Church than with any intention of obeying, and he was therefore compelled in justice to pass sentence on him (iuste animadvertere in ipsum). The four most serious charges against him were, frequent perjuries, wilful (temere) violation of the peace between the Church and the empire, sacrilege by the capture of cardinals, prelates, and others of the clergy both regular and secular on their way to a council called by his predecessor; finally, suspicion of heresy not on doubtful and light, but on weighty and clear grounds. The first charge

pedes a presulibus et clericis osculari, sacrumque nominari se imperans, puniri capite mandat omnes velut hostes ac blasphemos qui de suis perversitatibus mannifestis audent vel tenuiter aliquam promere veritatem."

During the vacancy in the papal see (280), "quasi Deus esset in cathedra Dei sedere voluit, dum non solum summum molitus est creare pontificem ac sedem Apostolicum subjicere ditioni, verum etiam cogitavit jus divinum irrumpere ac mutare fœdus Evangelii sempiternum. Cumque haberet cornu potestatis insigne ac os loquens ingentia, putavit quod posset mutare leges et tempora ut prosterneretur veritas, ideoque sermones contra Ecclesiam protulit et verba blasphemie in Moysem et Dominum. Nam Saduceorum heresim reparare contendens, animam cum corpore in nihilum resolvi sui concellanei asserunt et perire." In the second document (l.c., p. 285 f., beginning of June 1245) among other charges it is alleged (p. 289) that, according to "opinio vulgata," three of his wives were poisoned. It repeats the charge of heresy, "eo quod, sicut sui domestici asserunt, anima hominis perit cum corpore, juxta Saduceorum heresim . . ." and ends with the suggestion that a number of the faithful in Palestine "procurante ut asseritur isto persecutor callido, gladiis nuper occubuit impiorum Sarracenorum . . . quod si verum forte constiterit, omnis pena vinceratur a tanto scelere, omnis ultio esset insufficiens ad vindictam, si vigeret zelus Domini tam in clero quam in populo christiano."

[1] Epis. Sae. XIII., vol. ii. 124, 17th July 1245.

was based on the breach by Frederick of his oath thrice repeated to respect and in good faith to protect the honours, rights, and possessions of the Roman Church, and to restore any of them that might fall into his hands. Despite these oaths he addressed abusive (comminatoria) letters to Gregory and to his brothers (*i.e.*, the cardinals), and he defamed Gregory. He had legates of the Apostolic See seized and imprisoned. He despised the privileges of the keys, declaring that he took no account of the sentence of Gregory, and he disregarded his excommunication, compelling others also not to observe it. He had occupied and still held lands the property of the Roman Church. He had compelled subjects of the Church to perjure themselves by absolving them from their oaths of fidelity to the Church, and by making them give oaths of fidelity to himself. The charge of breaking peace with the Church is connected with breaches of the conditions of the peace of Ceperano. The strong suspicion of heresy is based on his disregard of the excommunication of Gregory, his relations with Saracens, the marriage of his daughter to the schismatic Vataces, the Emperor of Nice, the murder of the Duke of Bavaria (specially devoted to the Church), and deficient zeal in relieving the oppressed and in building churches and monasteries. Gregory's story regarding Frederick and the three impostors is not repeated.[1]

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[1] L.c. Innocent does not mention that Frederick took the initiative, nor does he refer to the protracted negotiations after Frederick's envoys took the oath on the emperor's behalf "quod staret nostris et ecclesie mandatis." With regard to it he remarks (p. 89, l. 39 f.): "Postmodum tamen quod iuraverat non implevit. Quinimmo ea intentione ipsum prestitisse probabiliter creditur, sicut ex factis sequentibus colligitur evidenter, ut eidem ecclesie ac nobis illuderet potius quam pareret, cum anno et amplius iam elapso nec ad ipsius ecclesie gremium revocari potuerit, nec sibi de illatis ei dampnis et iniuriis curaverit satisfacere, licet super hoc extiterit requisitus." The main grounds of his excommunication are fourfold (p. 90, l. 4): "Deieravit enim multotiens; pacem quondam inter ecclesiam et imperium reformatam temere violavit; perpetravit etiam sacrilegium, capi faciens cardinales Sancte Romane ecclesiæ ac aliarum ecclesiarum prelatos et clericos, religiosos et seculares, venientes ad concilium quod idem predecessor duxerat convocandum; de heresi quoque non dubiis et levibus sed difficilibus et evidentibus argumentis suspectus habetur." The perjuries he connects with his violation of the oath given by him on three occasions: "Honores iura et possessiones Romane ecclesie pro posse suo

Frederick was ready with his reply within a fortnight of Innocent's order deposing him.

In his encyclical Frederick denied the authority of the Pope to depose temporal rulers. The Pope had, by law and custom, the right to consecrate the emperor, but this gave no more

servare ac protegere bona fide . . . sed horum trium iuramentorum temerarius extitit violator non sine proditionis nota et lese criminis maiestatis."

Innocent specified a number of cases in which Frederick had violated the terms of the peace of Ceperano (twelve cases), including the trial of ecclesiastics in his courts, and his failure to compensate the Templars and Hospitallers. As to the numerous vacancies in episcopal sees, he remarks, "Et licet forte in aliquibus eiusdem regni ecclesiis electiones sint a capitulis celebrate, quia tamen per illa eiusdem familiares clerici sunt electi, probabili potest argumento concludi, quod facultatem non habuerunt liberam eligendi."

The charge of sacrilege relates to his seizure of clerics on their way to the council summoned by Gregory.

The charge of heresy is based on his disregard of his excommunication (p. 92, l. 11 f.) and his frequent assertions "se prefati G. pape sententias non vereri." Other grounds of suspicion were his friendship with the Saracens, "ipsorumque ritus amplectitur, illos in cotidianis eius obsequiis notabiliter secum tenens"; his use of eunuchs; the recital of Mahomed's name day and night in the temple; the honourable reception he had lately given to the envoys of a Sultan who had shortly before inflicted grievous injuries on the Christians in Palestine. Innocent even included under this head the murder of the Duke of Bavaria, whom "specialem ecclesie Romane devotum, facit sicut pro certo asseritur, Christiana religione dispecta per assisinos occidi"; the marriage of his daughter to Vataces, the Greek Emperor of Nice; his failure to relieve the oppressed (p. 93, l. 5 f.), "manu eius, ut decet principem, ad elemosinas inextenta"; his failure to build churches and monasteries, "Nonne igitur hec non levia sed efficatia sunt argumenta de suspitione heresis contra eum? cum tamen hereticorum vocabulo illos ius civile contineri asserat et latis adversus eos sententiis debere succumbere, qui vel levi argumento a iudicio catholice religionis et tramite detecti fuerint deviare."

Innocent refers also to the miserable state to which Frederick had reduced Sicily, and to his failure to pay the tribute due to the Church of Rome.

He pronounces sentence: "Nos itaque super premissis et quam pluribus aliis eius nefandis excessibus cum fratribus nostris et sacro concilio deliberatione prehabita diligenti . . . memoratum principem, qui se imperio et regnis omnique honore ac dignitate reddidit tam indignum quique propter suas iniquitates a Deo, ne regnet vel imperet, est abiectus, suis ligatum peccatis et abiectum omnique honore ac dignitate privatum a Domino ostendimus, denuntiamus ac nichilominus sententiando privamus, omnes, qui ei iuramento fidelitatis tenentur astricti, a iuramento huiusmodi perpetuo absolventes, auctoritate apostolica firmiter inhibendo, ne quisquam de cetero sibi tamquam imperatori vel regi pareat vel intendat. . . . Illi autem, quibus in eodem imperio imperatoris spectat electio, eligant libere successorem. De prefato vero Sicilie regno providere curabimus cum eorundem fratrum nostrorum consilio, sicut viderimus expedire."

power to depose him than the fact of consecrating and anointing their rulers gave bishops such a power in the case of their kings. Frederick went on to take a number of exceptions to the proceedings, such as that there was no proper accuser nor public inquiry, and that the mere assertion by Innocent that the facts were notorious did not make them to be so. The witnesses were few in number and tainted. He had received no proper summons to appear, and a conviction in the absence of the accused was null and void. The extravagance of the proceedings was apparent, as the emperor was convicted of lèse majesté, though he was not subject to the law, and was one on whom God alone could inflict temporal punishment. On the other hand, he admitted the authority not only of the Pope, but of every priest to inflict on him spiritual punishments. He protested his orthodoxy. Finally, he warned those whom he addressed that they were also concerned, as his defeat would encourage the Pope to deal with them when their turn came.[1]

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[1] M. G. H., 'Const.,' ii. 262, July-September 1245. In this encyclical Frederick called on those to whom it was addressed to consider "si fuerit in archipontifice nostro (or 'in pontificibus nostris') pontificalis rectitudinis zelus, si nobis tot et tantis iniuriis lacessitis iusta debeat defensio denegari, si denique Christi vicarius Christi vices impleverit et si predecessoris Petri successor eiusdem imitatur exemplum. Consideret etiam quo iure censeri debeat processus huiusmodi contra nos habitus vel quo nomine nuncupari, si dici sententia debeat, quam iudex incompentens promulgavit. Nam etsi nos nostre catholice fidei debito suggerente manisfestissime fateamur, collatam a Domino sacrosancte Romane sedis antistiti plenariam in spiritualibus potestatem, quantumcumque quod absit sit ipse peccator, ut quod in terra ligaverit sit ligatum in celis, et quod solverit sit solutum, nusquam tamen legitur divina sibi vel humana lege concessum, quod transferre pro libito possit imperia aut de puniendis temporaliter in privatione regnorum regibus aut terre principibus iudicare. Nam licet ad eum de iure et more maiorum consecracio nostra pertineat, non magis ad ipsum privacio seu remocio pertinet quam ad quoslibet regnorum prelatos, qui reges suos, prout assolet, consecrant et inungunt." After certain technical objections, Frederick proceeds (p. 365, l. 7 f.): "Apparet nichilominus animosa nimis et ampullosa non minus ex ipsius inflicte pene severitate sententia, per quam imperator Romanus, imperialis rector et dominus maiestatis, lese maiestatis dicitur crimine condempnatus, per quam ridiculose subicitur legi qui legibus omnibus imperialiter est solutus, de quo temporales pene sumende, cum temporalem hominem superiorem non habeat, non sunt in homine, sed in Deo. Spirituales autem penas per sacerdotales nobis penitentias indicendas, tam pro contemptu clavium quam pro aliis transgressionis humane

In a letter addressed to the French in September, Frederick complained not only of the unwarrantable action of Innocent IV. and some of his predecessors in deposing kings and other rulers, but also of their interference, at the request of one party to a quarrel, between rulers and their subjects or between the subjects themselves. He also complained of papal encroachments on the jurisdiction of the secular courts. He had sent envoys to Louis IX. to endeavour to enlist his support after consulting the peers and other nobles of his kingdom (congregatis laicis paribus regni sui aliisque nobilibus). Even if active support were not forthcoming, he begged that none of Louis' subjects be allowed to assist the Papacy while the conflict continued. He offered to submit to the decision of the king and his nobles on the compensation due from him to the Church, provided they could procure the cancellation of the orders passed at Lyons. Should peace be restored with the Pope, and should the Lombards submit, or at all events lose the support now given them by the Church, he was prepared to enter into very far-reaching engagements as regards the Holy Land. If the danger from the Papacy and the Lombards prevented this, he would do all in his power to help Louis and all other crusaders.[1] An encyclical was

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peccatis, nedum a summo pontifice, quem in spiritualibus patrem nostrum et dominum profitemur, si tamen ipse nos filium debita relatione cognoscat, sed per quemlibet sacerdotem reverenter accipimus et devote servamus." He insists on his orthodoxy, and then proceeds, "Advertat igitur prudentia tua si predicta sententia nulla ipso iure, nullus ipso iure processus non magis in nostram quam in omnium regum et principum ac quarumlibet dignitatum temporalium perniciem debeat observari, quam nulla nostrorum Germanie principum, a quibus assumptio status et depressio nostra dependet, presentia vel consilia firmaverunt. Advertat et aliud qualis ex istis initiis exitus expectetur! A nobis incipitur, sed pro certo noveritis (we quote from A on p. 365), quod in aliis regibus et principibus finietur, a quibus publice glориantur resistentiam aliquam minime formidare, si, quod absit, posset nostra potencia primitus conculcari. Regis (*i.e.*, King of England) igitur vestri iusticiam in causa nostra defendite, suis et eorum heredibus providete!" He asks that no countenance be given to the Pope nor to his legates, but rather to himself, as his cause concerns all kings and princes (quos communiter causa nostra contingit).

[1] M. G. H., 'Const.,' ii. 264, September 1245. In this letter, "universis presentes litteras inspecturis per regnum Francie constitutis," Frederick complained that he and other kings and princes with others "honores quoslibet et iurisdictiones habentes,"

also issued apparently at the same time to kings and rulers generally. Unfortunately we have only a fragment of the letter, but from the portion preserved it appears to have contained a fresh statement of his grievances against Gregory IX. and Innocent IV. from the time of the second rebellion of his son Henry, the King of the Romans.[1]

In another letter, evidently addressed to rulers generally, Frederick complained of the decline of the Church; it was ungrateful to its benefactors, and no longer resplendent with miracles. The clergy were now given over to the pleasures of the world, and it would be an act of charity to deprive

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were aggrieved by the present and other earlier Popes, "ex eo quod ipsi contra Deum et iustitiam posse sibi iurisdictionem et auctoritatem usurpant instituendi et destituendi seu removendi ab imperio, regnis, principatibus et honoribus suis imperatores, reges et principes seu quoscunque magnates, temporalem auctoritatem in eos temporaliter exercendo, absolvendo etiam a sacramentis quibus dominis suis vassalli tenentur, contra dominos excommunicationis tantummodo sentencia promulgata, quodque questione sive discensione inter dominos et vassallos seu inter duos nobiles et vicinos invicem contendentes, prout assolet, emergente, predicti summi pontifices ad petitionem unius partis tantummodo partes suas temporaliter interponunt, volendo ipsos invitos in se compromittere vel aliter ad concordiam cohercere, et alligando se fidelibus contra dominos aut uni de partibus supradictis, quod non prius pacem cum aliis faciant quam alligatos sibi ponant in pace, recipiendo similiter promissionem de non faciendo pacem cum dominis a vassallis; item ex eo quod predicti summi pontifices in preiudicium iurisdictionis et honoris regum et principum predictorum, ad petitionem clericorum seu laycorum, cognitionis causarum de rebus temporalibus, possessionibus pheodalibus seu burgesaticis in ecclesiastico foro tractandas recipiunt et committunt." He asked that the King of France "congregatis coram se laycis paribus regni sui aliisque nobilibus tanto negotio opportunis, per se cum eis super omnibus predictis et singulis audiat iura nostra." If the king would not do as he suggested, that at all events he should not oppose the action taken by Frederick nor allow his subjects clerical or secular to help the Pope. If the king "una cum paribus et nobilibus regni sui" will interpose, he is ready to accept the king's decision, "de consilio parium nobiliumque suorum, visis et diligenter auditis nostris et imperii iuribus," regarding the satisfaction to be given to the Church, "ac deinde pace per hoc inter nos et ecclesiam procedente et reliquiis Lombardorum, prout tenentur et debent, vel ad mendatum nostrum et imperii redeuntibus vel prorsus ab ecclesie defensione seclusis," he would then be ready to go to the Holy Land alone or with the King of France, and to recover all the territory that at one time belonged to the kingdom of Jerusalem. Should the danger from the Lombards make it impossible for him to go, he would give all the help in his power to those who went on crusade.

[1] L.c., 265.

them of their excessive riches, thus effecting, what he had always intended—namely, their restoration to what they had been in primitive times.[1]

Innocent replied at some length. The Popes as successors of Peter had received by divine appointment a general "legatio" over all men and in all matters spiritual and temporal. Even under the old dispensation priests had powers over nations and kings, and it was in virtue of these powers that they deprived of their thrones kings unworthy to rule. The Roman pontiff might when occasion arose (casualiter) judge any Christian, however exalted in rank, especially when there was no one else who could do so, and when a question of sin was involved. In such cases one separated from the body of the faithful was thereby also deprived of any temporal authority he might have possessed, as there was no power ordained of God (a deo nulla sit ordinata potestas) outside the "Ecclesia." Those, therefore, who attributed the Pope's imperial power to a grant from Constantine were in error. Before his conversion the powers illegitimately exercised by Constantine were those of a tyrant, "permissa" not "concessa," and these he resigned to the Church, and it was the Church which bestowed on him the divinely ordered imperial power. Both swords, the temporal and the spiritual, belonged to the Church, but it handed over the former for use to the emperor. The acceptance of this use of the sword was symbolised in the coronation service in which the emperor drew from its scabbard a sword given him by the Pope, and brandished it aloft. Frederick's argument that the Pope had no more power than bishops to depose the ruler was fallacious. Bishops were the subjects of their kings, and owed them fidelity and obedience (subjectio). The emperor, on the other hand, owed obedience and fidelity to the Pope. Moreover, kings succeeded one another by way of inheritance, while in the case of emperors succession was decided by the free election of German princes. Dealing with the more technical objections, the Pope declared that Frederick's citation was made publicly and was known to him. The facts of the case were so notorious, Innocent gave instances, that it was possible at once to proceed to judgment. Frederick had ridiculed the idea that he could be guilty of lèse majesté, but an offence against the divine majesty was far more serious than one against a mere man, and was subject to the like penalties. In answer to Frederick's attacks on the Church he justified its wealth and power, and turned the tables on him by showing that these attacks proved Frederick's desire to oppress the Church and the clergy.

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[1] Matthew Paris, vol. iv. 475. To the King of England, &c. He dwells on the ingratitude of the priesthood: "Quanto manus largiores extenditis, tanto non solum manus, sed etiam cubitos avidius apprehendunt, suo nos laqueo detinentes. . . ."

He expressed his desire to restore the Church to its primitive purity (p. 477): "Quia semper fuit nostræ intentio voluntatis, clericos cujusque ordinis ad hoc inducere, et maxime maximos, ut tales perseverarent in fine, quales fuerunt in ecclesia primitiva, Apostolicam vitam ducentes, humilitatem Dominicam imitantes. Tales namque clerici solebant angelos intueri, miraculis choruscare, ægros curare, mortuos suscitare; et sanctitate, non armis, sibi reges et principes subjugare. At isti, sæculo dediti, deliciis ebriati, Deum postponunt; quorum ex affluentia divitiarum religio suffocatur. Talibus ergo subtrahere nocentes divitias, quibus dampnabiliter onerantur, opus est caritatis. Ad hoc vos et onmes principes una nobiscum, ut cuncta superflua deponentes, modicis rebus contenti, Deo deserviant, debetis diligantiam adhibere."

There is no date, but Innocent appears to refer to this letter in his reply to Frederick's first encyclical.

Matthew Paris remarks that this letter did Frederick great harm in France and England: "Et de hæresi per id ipsum se reddens suspectum."

He did not deal with the statements made in various letters by Frederick as to the peace negotiations, but asserted Frederick's object was merely to get a false peace which would enable him more easily to injure the Church. He made no express reference to the Lombards, but charged Frederick with specially hating the Church because it defended the liberty of kings whom he desired to subject to himself.[1]

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[1] Win. Ac., vol. ii. 1035, 1. Innocent's answer to Frederick's complaint regarding his action. Written towards the end of 1245 (p. 697, l. 19 f.): "Cum enim magistrum discipulus aut servus dominum non precellat, preferri nolumus magistro nostro et domino Ihesu Christo, quin cum ipso maledicorum hominum praviloquia preferamus, cui dolum non habente vel maculam inhonestiora exprobabat reproborum improbitas, quam nobis exprobret posteritas eorundem."

With reference to Frederick's objection that the sentence was invalid as passed in his absence, he charges him

Many fruitless attempts were made, especially by Louis IX., to restore peace between the empire and the Papacy. In

(p. 697, l. 32 f.) "non desistens iuxta solitum apostolica preeminentie vacuare primatum, quem beatum Petrum, fidelium omnium capud, ac successores ipsius accepisse constat, non ab homine, sed a deo, cuius auctoritatem profecto diminuit nec deum dei filium heredem universorum et dominum cognoscit, quisquis ab ipsius ditione vicarii se contendit exemptum. Generali namque legatione in terris fungimur regis regum, qui non solum quemcumque, sed ne quid de rebus aut negociis intelligeretur exceptum, sub neutro genere generalius universa complectens, etiam quodcumque ligandi super terram pariter et solvendi apostolorum principi nobisque in ipso plenotudinem tribuit potestatis, etiam ut doctor gentium huiusmodi plenitudinem non restringendam ostenderet, dicens: 'An nescitis, quoniam angelos iudicabimus?' quanto magis secularia! Nonne ad temporalia quoque porrectam exposuit datam eidem in angelos potestatem, ut hiis intelligantur minora subesse, quibus subdita sunt maiora? . . . Hac potestate usi leguntur plerique pontifices veteris testamenti, qui a nonnullis regibus, qui se indignos fecerant principatu, regni solium auctoritate sibi divinitus tradita transtulerunt. Relinquitur ergo Romanum pontificem posse saltem casualiter suum exercere pontificale iudicium in quemlibet Christianum cuiuscumque conditionis existit, presertim si de ipso alius iustitie debitum nolit reddere vel non possit, maxime ratione peccati, ut peccatorem quemcumque, postquam in profundum viciorum venerit per contemptum tamquam publicanum et ethnicum habere constituat et a fidelium corpore alienum sicque saltem per consequens privatum, si quam habebat, temporalis regiminis potestate, qui procul dubio extra ecclesiam efferre omnin non potesto, cum foris, ubi omnia edificant ad gehennam, a deo nulla sit ordinata potestas. Minus igitur acute persipiunt, nescientes rerum investigare primordia, qui apostolicam sedem autumnant a Constantino principe primitus habuisse imperii principatum, qui prius naturaliter et potencialiter fuisse dinoscitur apud eam. Dominus enim Ihesus Christus, sicut verus homo verusque deus, sic secundum ordinem Melchisedech verus rex ac verus sacerdos existens . . . in apostolica sede non solum pontificalem sed et regalem constituit monarchatum, beato Petro eiusque successoribus terreni simul ac celestis imperii commissis habenis, quod in pluralitate clavium competenter innuitur, ut per unam, quam in spiritualibus super celos accepimus, intelligatur Christi vicarius iudicii potentiam accepisse. Verum idem Constantinus, per fidem Christi catholice incorporatus ecclesie, illam inordinatam tyrampnidem, qua fores antea illegitime utebatur, humiliter ecclesie resignavit . . . et recepit intus a Christi vicario, successore videlicet Christi, ordinatam divinitus imperii potestatem, que deinceps, ad vindictam malorum, laudem vero bonorum, legitime uteretur et, qui prius abutebatur potestate permissa, deinde fungeretur auctoritate concessa. In gremio enim fidelis ecclesie ambo gladii habentur administrationis utriusque reconditi. . . . Neuter quoque non creditur iuris Petri, cum de materiali eidem dominus non dixerit 'abice,' sed 'converte gladium tuum,' ut ipsum videlicet per te ipsum ultra non exerceas, 'in vaginam.' Tuum gladium tuamque vaginam signantius, ut apud suum vicarium, capud ecclesie militantis, etsi non executionem huius gladii divino ei prohibitam interdicto, auctoritatem tamen, et qua eadem executio answer to an appeal in the autumn of 1246, Innocent wrote Louis that, while he had little hope of any results from his

producitur, in legis ministerium, malorum vindicem bonorumque tutorem innueret residere. Huius siquidem materialis potestas gladii apud ecclesiam est implicata, sed per imperatorem, qui eam inde recipit, explicatur et, que in sinu ecclesie potentialis est solummodo et inclusa, fit cum transfertur in principem, actualis. Hoc nempe ille ritus ostendit, quo summus pontifex cesari, quem coronat, exhibet gladium vagina contentum, quem acceptum princeps exerit, et vibrando innuit se illius exercitium accepisse." In answer to Frederick's argument that the Pope had no more right to depose the emperor than bishops to depose a king crowned by them, he replied: "Aliud est enim de regibus aliis, qui a suis pontificibus iniunguntur, a quibus pro temporalibus subiectionis et fidelitatis recipiunt iuramenta, aliud de Romanorum principe, qui Romano pontifici, a quo imperii honorem et diadema consequitur, fidelitatis et subiectionis vinculo se astringit, sicut antiquitas tradidit et modernitas approbavit." Moreover, while other kings succeed by inheritance, the Roman emperor "per liberam Germanie principum electionem assumitur, in quos ius et potestas elegendi regen in imperatorem a nobis postmodum promovendum, sicut ipsi non abnuunt sed fatentur, ab apostolica sede pervenit."

The summons to Frederick was issued publicly, and came to his notice. Independently of this his offences were notorious, and such that "non requiritur iudicum dampnationis in actus," but "animadversionis dumtaxat executio in actorem."

With regard to Frederick's attack on the wealth of the Church, he ends his defence as follows (p. 701, l. 2 f.): "Nosquoque etsi preferamus paupertatem ex spiritu, que inter affluentes divitias cum difficultate nutritur, divitiarum tamen non usum in culpa fore dicimus, sed abusum, patenter quoque se ad oppressionem ecclesie, cuius esse debebat ex officio advocatus, totis affectibus aspirasse propria loquela convincitur, ex eo precipue, quod ad ecclesiarum et clericorum spolia alios principes sue tyrampnidis invitat exemplo."

With regard to the negotiations, he does not answer Frederick in detail, but merely remarks, "Unde si acute cernitis, certius certo videtis, o animalia oculata, quod in tractatibus hactenus habitus reconciliationem non veram sed simultatoriam pacis emulus sectabatur, non ut tamquam revocanti matri reversus filius osculum amoris inprimeret, sed quemadmodum lupus ovi ecclesie infigeret sub ficte pacis nubilo morsum mortis eamque fallendo interciperet, quam non potuit insequendo."

There is no express reference to the Lombards, but he appears to refer to them in the following passage: "Quam (*i.e.*, the Church) eidem Fr. teste deo illa percipue causa fecit exosam, quoniam ad cetera regna sue subicienda virtuti occulum ambitionis extendens eam repperit obicem, cuius interest materno affectu Christianorum regum tamquam spiritualium filiorum iura protegere ipsorumque defendere libertates. Propter quod, si qua contra eam obloquendo rescripserit, eum nobis tacentibus non fidelem assertorem agnoscite, sed malivolum impostorem." In the end of March 1246 (H.-B., vol. vi. 396 f.), Innocent wrote another encyclical dealing with Frederick's attacks on the wealth and power of the Church, and he exhorted his brothers and sons in Jesus Christ to take up arms in its defence.

efforts, he was prepared to treat Frederick as leniently and kindly (mitius et benignius) as possible without sinning against God and the Church. Two and a half months later, however, he wrote the Bishop of Strassburg that under no circumstances would he make peace with Frederick so long as he remained emperor or king, and in a later letter this was extended, so far as the empire was concerned, to all Frederick's offspring.[1]

Frederick in a letter to Henry III. expresses himself as willing to come to terms provided the rights and honours of the kingdom were safeguarded, but as he included in this the submission of the Lombards, or at all events the abandonment of their cause by the Church, and the attitude of the Pope to this had always been the obstacle to peace, no reconciliation was possible.[2]

According to Matthew Paris, Louis made a last attempt after his capture in Egypt in 1250 to get the Pope to come to terms with Frederick, but he again failed, greatly to the anger of Louis' brothers and the Duke of Burgundy, through whom this ineffectual attempt to restore peace was made.[3]

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[1] Epis. Sae. XIII., vol. ii. 257, 5th November 1246. Innocent informed Louis in answer to his appeal for peace between the Church and Frederick: "Prefati Frederici salutem appetimus ipsumque desideramus recipere, si forsan inspiratus divinitus redire valit ad ecclesiasticam unitatem," and "agemus, quanto mitius et benignius cum Deo et honore ecclesie sine peccato poterimus cum eodem." On the 28th January 1247 Innocent wrote the bishop and people of Strassburg (l.c., 277): "Quod si contingat inter ecclesiam et F. quondam imperatorem pacem aliquo tempore reformari, quod nuimquam erit eo remanente imperatore vel rege." In a later letter to some king (not probably, as H.-B. suggests, Louis IX.) this is extended: "Ceterum pro constanti teneas quod qualiscumque pacis tractatus emergat, dictus F. aut aliquis de sua progenie nunquam de cetero ad imperii regimen assumatur" (H.-B., vol. vi. 641, date uncertain).

[2] H.-B., vol. vi. p. 645, August 1248. A letter to Henry III. regarding the failure of peace negotiations. Frederick attributed an attempt to start negotiations to Louis IX., and stated that his envoys "salvo honore semper imperii et regnorum, quibus authcre Domino presidemus, voluntatem nostram ad pacem paratam exponerent, et manifesta presagia future satisfactionis offerrent, que rex ipse sufficientia reputabat. Sed iste bonus pastor Ecclesie nullum ad jus et honorem imperii nec ad nos voluit habere respectum, sed totum sue subjicere potestati, pro Lombardorum negocio qui pacis tractatui semper hactenus impedimenta pararant."

[3] Matthew Paris, vol. v. p. 175. According to Matthew Paris, the king's brother and the Duke of Burgundy begged the Pope "ut regi, in discrimine

These efforts are remarkable in the case of a man so pious and with such a strong sense of justice as Louis, and it is difficult to believe he would have made them had he attached any weight to the charges of heresy against Frederick, or had he believed that the faults lay all on one side in his quarrel with the Church. While, however, the Pope could not induce him to treat Frederick as deposed or as a heretic, he would not support Frederick in his attacks on the Church, and when at one time (in 1247) there had appeared to be some danger of Frederick's using force against the Pope at Lyons, Louis and his mother had at once offered to send troops to protect him.[1]

It was some time before arrangements were completed to elect an emperor in place of Frederick II. Finally Henry Raspe, the Landgraf of Thuringia, was accepted by the Pope as a suitable successor of Frederick, and in April 1246 Innocent wrote the archbishops and other nobles of Germany pressing them (monemus, rogamus et hortamur attente mandantes) to elect Henry. He also wrote a number of the most important lay princes individually, exhorting them to proceed quickly to an unanimous election, but not naming the person to be elected.[2]

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tanto constituto et pro honore universali ecclesiæ dimicanti, non segniter subveniret, et Frethericum, qui solus inter omnes Christianos tantis potest mederi periculis, ad pacem ecclesiæ revocans humiliatum, ipsum ad hoc induceret, ut ipsi regi jam pæne deperato succursum competens conferat et festinum," and threatened if he did not comply to make him leave Lyons.

[1] Epis. Sae. XIII., vol. ii. 395, 17th June 1247. Innocent thanks Louis IX. and his mother and brothers for their offer of military help, but asks them not to take action "quousque super hoc per nostrum nuncium vel speciales litteras votum Apostolice Sedis agnoscas."

[2] L.c., 159, 21st April 1246. Innocent "Archiepiscopis et nobilibus viris aliis principibus Theutonie habentibus potestatem eligendi Romanorum regem, in imperatorem postmodum promovendum. Quia inter ceteros orbis principes honorem ecclesie ac imperii Romani tenemini specialiter procurare . . . eo confidentius vos ad id requirimus et hortamur, quo nostris in hac parte beneplacitis libentius et promptius vos credimus parituros." Hence, as the Landgraf of Thuringia was willing to accept "universitatem vestram monemus, rogamus et hortamur attente mandantes in remissionem peccaminum iniungendo, quatinus de gratia spiritus sancti confisi eundem landtgravium in Romanorum regem in imperatorem postmodum promovendum, cum prefatum imperium ad presens vacare

Henry was accordingly elected, but none of the more important secular princes attended. Henry died in less than a year, and many princes, including Richard of Cornwall and the Duke of Brabant, were unsuccessfully approached. Finally, on the recommendation of the Duke of Brabant, his nephew Count William of Holland was selected to succeed Henry. Very extensive powers had been given to the legate in Germany to deal with recalcitrant clerics.[1] William was elected, but again none of the greater secular princes, saving the Duke of Brabant, took part.

Frederick, during the period between his deposition and his death, met with one great disaster, the defeat of his forces at Parma in 1248, and a serious loss in the capture of his son Enzio early in 1249. After this he seems to have improved his position considerably in Italy, and not to have lost ground in Germany. The Pope, on the other hand, appears at the time of Frederick's death to have been losing ground. Intense dissatisfaction was caused by the heavy financial exactions necessitated by the expenditure entailed by his struggle with Frederick, and especially by the very extensive use he made of provisions and dispensations to strengthen his party. The intense feeling roused against the curia is shown by Bishop Grosseteste's famous "sermo" before the Pope at Lyons in May 1250.[2] Another striking example of the stir caused by

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noscatur, unanimiter absque dilationis dispendio eligatis. . . ." In his letter to the King of Bohemia (l.c., 160 of same date) and certain other lay princes individually (also one bishop), Innocent does not lay down whom they are to elect.

[1] L.c., 303, letter of instructions given by Innocent to his legate in Germany, 15th March 1247. "IV. discretioni tue ammovendi perpetuo tam archiepiscopos et episcopos quam alios ecclesiarum prelatos tue legationis, qui fuerint inobedientes ecclesie . . . ab amministratione spiritualium et temporalium suarum ecclesiarum, et contradictores super hoc per censuram ecclesiasticam appellatione postposita compescendi . . . liberam concedimus tenore presentium potestatem."

[2] Sermo Roberti Linconiensis Episcopi, propositus coram Papa et Cardinalibus, &c., 13th May 1250, vol. ii. p. 250 f. of E. Brown's Fasciculus Rerum Expetendarum et Fugiendarum. This was not a sermon, but a written statement, of which the bishop gave copies to the Pope and several of the cardinals, and which was read out, not publicly, but before the Pope and the cardinals.

After enumerating a number of the evils due to bad pastors, he wrote (p. 252): "CAUSA; fons et origo hujus est hæc CURIA; non solum eo quod hæc mala non dissipat, the struggle between the Pope and the emperor is afforded us by the proceedings of a league of French barons formed in November 1246 to oppose the encroachments of the Church. The members of the league pledged themselves not to allow clerics to try any cases saving where heresy, marriage, and usury were concerned, and they expressed their desire to see the Church restored to its primitive state. It is evident that such attacks as that of Frederick on the wealth of the Church had not been without effect.[1]

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et has abominationes non purgat, cum ea sola hac maxime possit, et ad hoc summe teneatur, sed et eo amplius, quod IPSA quoque per suas dispensationes et provisiones et collationes curæ pastoralis, tales, quales prætacti sunt, pastores, immo mundi perditores, in oculis solum constituit hoc ut provideat vitæ alicujus temporali, multa millia animarum pro quarum qualibet sempiterna vivificarda, Filius Dei morte turpissima voluit condemnari, devorationi summi bestiarum agri tradit et sempiternæ morti. . . . (p. 253.) Nec dicat quis quod talia facit hæc Curia propter Ecclesiæ communem utilitatem. Communem utilitatem operati sunt sancti patres per mali sufferentiam, et nullo modo, quia et hoc modo illicitum, per mali actionem ; væ enim his qui dicunt, faciamus mala ut eveniant bona, quorum damnatio justa est. . . . (p. 255.) Potestas autem pastoralis, quæ in virtute et potestate data est Apostolis super omnia dæmonia . . . data est etiam pastoribus . . . plurimum est hodie, et maxime in Anglia, coarctata et ligata. Primo, per exemptiones . . . Secundo. Per potestatem secularem . . . Tertio. Per Apellationum licitiones. . . . (p. 257.) Hujus quoque curiæ . . . mundum replevit inconstantia mentiendi, fugavit verecundiam, adhibendi fidem chartis omnem abstulit, et non observandi fidem omnem contulit audaciam. Clamat enim mundus, quod hæc curia, contra præceptum Evangelicum, quo dictum est Petro, Converte gladium tuum in locum suum, manu propria educit gladium materialem etsi a solicitis de salute hujus sacræ sedis vehentisime timetur, ne, quod absit, veniat super eam illa terribilis subjuncta Domini comminatio, Omnes enim qui acceperint gladium, gladio peribunt. . . . . Et omnino timendum, imo magis pro certo tenendum est huic sacræ sedi quod illam quam nunc sentit pœnarum præsentiam et bonorum absentiam induxerint super eam prædictæ actiones malæ et consimiles ut evenirent ei bona ; et quod nisi in his et consimilibus absque mora se corrigat, cito profecto privabitur bonis :"

[1] H.-B., vol. vi. 467, November 1246. The magnates declared that clerics "jurisdictionem secularium principum sic absorbent ut filii servorum secundum suas leges judicent liberos et filios liberorum . . . nos omnes regni majores attenti animi percipientes quod regnum non per jus scriptum nec per clericorum arrogantiam, sed per sudores bellicos fuerit acquisitum, presenti decreto omnium juramento statuimus et sancimus ut nullus clericus vel laicus alium de cetero trahat in causam coram ordinario judice vel delegato, nisi super heresi, matrimonio vel usuris . . . ut sic jurisdictio nostra ressuscitata respiret, et ipsi hactenus ex nostra depauperatione ditati . . . reducantur ad statum Ecclesie primitive, et in contemplatione viventes . . .

The death of Frederick marks an important stage in the contest between the Papacy and the empire, which had begun nearly two hundred years before between Gregory VII. and Henry IV.

Gregory had claimed very large powers as vicar of St Peter, not only over the empire but also over secular rulers generally, but they were extraordinary powers. Gregory was not content with this, and endeavoured to obtain some secular control also, by extending to as many countries as possible a claim to feudal superiority by the Church of Rome.

Innocent III., while careful to assert his powers as vicar, not of Peter, but of Christ or of God, also sought to bring the relations between the Papacy and the empire under definite rules. He maintained any subsisting feudal claims in other countries, and in the case of Sicily and England the exercise of his powers as feudal overlord played a considerable part in his policy, but on the whole he generally depended on his extraordinary powers as vicar of Christ. In the case of the empire he claimed a special position, inasmuch as the Western empire was the creation of the Papacy, which had transferred the seat of empire from Constantinople—a transfer to which the German princes owed the right to elect a king who became emperor when crowned by the Pope. He held that in virtue of this transfer the Papacy had the first and

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ostendant miracula que dudum a seculo recesserunt . . ."

Innocent answered the attack of the barons by a letter to his legate in France (l.c., 483 f., 4th February 1247), in which he directed his legate to point out to the barons how Charlemagne had confirmed the statute of Theodosius (p. 485) "videlicet ut quicumque litem habens (sive possessor) sive petitor fuerit, vel inito lites vel decursis temporum curriculis, sive cum negotium peroratur sive cum jam ceperit promi sententia, si judicium elegerit sacrosancte sedis antistitis, illico sine aliqua dubitatione etiam si pars altera refragatur, ad episcoporum judicium cum sermone litigantium dirigatur, et omnes cum cause que pretorio et etiam civili jure tractantur, episcoporum terminate sententiis perpetuo robur obtineant firmitatis et negotio quod judicio eorum deciditur, nequaquam ulterius ab aliquo retractetur; ex quo manifesta potest ratione perpendi quam iniquum videatur et absonum si honor Ecclesie que tam grandis libertatis privilegio dotata dinoscitur, in illis immunitatibus que multo predictis dinoscuntur esse minores, hiis temporibus decurtetur."

For this supposed edict of Theodosius cf. vol. ii. p. 222.

last word in such elections. They were of vital importance to the Church, and it was for the Pope to decide whether the person elected by the princes was fit for empire and to settle disputed elections. He also appears to have assumed that certain rules apparently derived from ecclesiastical law were applicable to the election proceedings. The majority of the princes, on the other hand, denied that the Pope had any voice in determining whether the prince elected by them was fit for empire, and they also contended that electoral disputes could only be decided by the electors themselves. It was no doubt Innocent's desire to conciliate as far as possible these opponents that made him so carefully avoid the use of the word "confirmation" in connection with his declaration in favour of Otto, and attempt to convince the princes that he was merely setting his seal on the legitimate and valid election of Otto, and was not tampering with their electoral rights.

No new questions of principle appear to have been raised by Honorius III., but Gregory IX. went a step beyond Innocent in claiming that in virtue of Constantine's donation the empire had been transferred to the Papacy, and that when it made it over to the Germans it still retained its overriding power. He also claimed the two swords—*i.e.*, the supreme authority in temporal and spiritual matters. While, however, the Church kept in its own hands the exercise of the spiritual power, it made over the sword of temporal power to secular rulers, to be exercised under its control.

Innocent IV. again went a step further. According to him the donation of Constantine was not in the true sense of the word a donation, it was a recognition by Constantine that the empire (and apparently all temporal power) belonged to the Church, and that Constantine had up till then exercised a usurped and unlawful power. Though Innocent put forward such far-reaching claims, his contest with the Hohenstauffen made it impossible for him to attempt in practice any such authority over temporal rulers generally, whatever may have been his theoretical views.

Innocent also went a step beyond any previous Pope since

Gregory VII., by practically ordering some of the German princes to elect Henry Raspe in the vacancy created by Frederick's deposition. As we have pointed out, however, he did not give such a direction to all the princes, and possibly his action in this case may be interpreted as an example of the Pope's claim to the obedience of the clergy even in secular matters.

While the papal claims were not acceptable to the majority of the German princes, a minority could generally be found, even among the secular princes, willing for reasons of immediate self-interest to support the Church, while increasingly, from the time of Innocent III., the Papacy insisted on the obedience of the great prince bishops, even in secular matters. The real mind of the princes has often to be gathered from their acts rather than from their writings, but Frederick had a chancery as efficient as that of the Papacy, and was well able to develop his views of the proper relations between the Papacy and the empire, and probably these views were generally shared by the majority, at all events of the secular German princes. It is perhaps doubtful whether they would have formally accepted Frederick's argument that Gregory's excommunication was invalid, because he was unworthy of his great office. Frederick at all events did not use this argument against Innocent IV. but pleaded in his case that the Pope had no authority to inflict temporal punishments, and that his proceedings were vitiated by grave irregularities. Whatever the cause, Frederick's excommunication and deposition were not in practice effective in the case of a large number of the German princes, nor indeed in the case of the kings of other countries such as France and England. Both Henry III. and Louis IX. in their correspondence treat Frederick as still emperor, notwithstanding his excommunication and deposition.

As we have seen, Frederick's attack on the wealth of the Church, and on its interference in secular matters, found an immediate response among the French nobles, and though the agitation against the Church died away after Frederick's death, it was a bad omen for the future.

The death of Frederick destroyed all chance of a united German empire strong in its German armies and the pecuniary resources of its Italian kingdom. It is impossible to say what might have happened had Frederick lived some time longer, but two important factors in the situation were that Frederick was not a beaten man at the time of his death, and that the unsparing use by Innocent IV. of all the ecclesiastical means at his disposal had stirred up strong feeling in Europe.

CHAPTER V.

THE DEVELOPMENT OF THE THEORY OF THE TEMPORAL AUTHORITY OF THE PAPACY IN THE CANONISTS OF THE LATER THIRTEENTH CENTURY.

It was with the pontificate of Innocent III., as we have seen, that the question of the relation of the temporal and spiritual powers again assumed something of the same importance as had belonged to it in the great conflict between Hildebrand and Henry IV.; and it is in the Decretal letters of Innocent III. that we must look for the ultimate sources of the extreme view of the papal authority in temporal matters which was developed in the second half of the thirteenth century.

It must, however, be observed that while Innocent III. often used phrases which were capable of this development, he was himself careful, at least in his strictly public utterances, to refrain from drawing out these conclusions. It was Innocent IV., especially in his 'Commentaries on the Decretals,' who did this, and it is to him that must in the main be traced the principles set out by the great Canonists of the later thirteenth century, like Hostiensis and William Durandus. They may indeed, with regard to this matter, be called the pupils and followers of Innocent IV.

It is, as has just been said, in his 'Commentaries,' much more than in the actual Decretals, that we must look for Innocent IV.'s theory of the relations of the temporal and spiritual powers. It is, indeed, a curious and rare spectacle to see a great Pope acting in two capacities, sometimes as a legislator and sometimes as a commentator upon the laws, and even upon his own judgments, and we should venture to say that Innocent IV. was quite conscious of the difference.

In his decrees he is issuing judgments and dogmatic statements, while in his 'Commentaries' he is giving his opinions as a Canonist.

We must therefore begin our consideration of the extreme theory of the later thirteenth century by an examination of the principles set out by Innocent IV.

The Pope, he says in one passage, has received his power of making canons from Christ Himself, while the emperor draws his authority as a legislator from the Roman people;[1] this is only a particular statement of the more general principle that the source and nature of the papal authority was very different from those of the temporal rulers.

In his comment on his own decree deposing Frederick II. he draws out and generalises the significance of his own action, and asserts that, inasmuch as Christ, even when he was in this world, was from all eternity the natural lord, and could by natural law have deposed emperors and kings, so also his vicars—that is, Peter and his successors—could do the same; for he would not have been a wise lord if he had not left a vicar who should exercise his authority.[2] Again, in commenting on the famous Decretal of Innocent III., 'Per Venerabilem,' where Innocent III. had said that the King of France did not recognise any superior in temporal matters, Innocent IV. says that this may be so "de facto," but while some say that "de jure" he was subject to the Roman emperor, he himself says he is subject to the Pope.[1]

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[1] Innocent IV., 'Apparatus ad quinque libros decretalium,' i. 7, 1 (cum ex illo privilegio). Tu es Petrus etc., usque, tibi dabo claves regni celorum: quo privilegio Romanam ecclesiam omnibus ecclesiis pretulit, et ei ligandi atque solvendi potestatem contulit 21. Di. in novo et c. quamvis (Decretum, D. 21, c. 2 and 3). Propter illud speciale privilegium potestatem habet condendi canones per quos majores ecclesiæ causæ referantur ad eum. (Dominus noster) Imperator autem habet a populo Romano. Insti. de jure nat. sed qui (Institutes, i. 2, 2).

[2] Id. id., ii. 2, II. in VI., c. 7. 'Ad apostolicæ Sedis' (VI., ii. 14, 2) (p. 130): "Nam Christus filius Dei, dum fuit in hoc seculo, et ab eterno Dominus naturalis fuit, et de jure naturæ in imperatores et quoscunque alios sententias depositionis ferre potuisset et damnationis et quascunque alias ut pote in personas quas creaverat et donis naturalibus et gratuitis donaverat et in esse conservaverat: eadem ratione et vicarius ejus potest hoc, nam non videretur discretus dominus fuisse, ut cum reverentia ejus loquar, nisi unicum post se, talem vicarium reliquisset, qui hæc omnia posset: fuit autem iste vicarius ejus Petrus, Matt.: XVI., ultra medium, et idem dicendum est de successoribus Petri, cum eadem absurditas sequeretur si post mortem Petri humanam naturam a se creatam sine regimine unius personæ reliquisset, et arg. ad hoc *s.* qui fil. sint legi. Per venerabilem (Decretals, iv. 17, 13) ultra me. de hoc not. *s.* de foro competenti. licet (Decretals, ii. 2, 10)."

It is apparently on a similar principle that Innocent IV. justified his action in requiring the Portuguese barons to accept his appointment of a guardian or "curator" of the kingdom, on account of the king's incapacity. He maintains that in such a case it is for the superior to appoint a "curator," and if there is no other superior the Pope should do this.[2]

Innocent IV. is clearly developing the position that he is the final superior, even in temporal matters, of all secular authorities, and we should conjecture that this is the meaning of his assertion that the Pope is the "judex ordinarius" of all men,[3] though this interpretation might be disputed.

Again he draws out a statement of Innocent III. about the election of the emperor, to a conclusion which may be suggested by the words, but is certainly not asserted. Innocent III. in a well-known Decretal letter had defended his interposition in the election of Philip of Swabia; he repudiated the claim "to elect" the emperor himself, but asserted his right to declare a candidate unfit for the office, and, in the case of a disputed election, to recognise the candidate whom he preferred. Innocent IV. in his comment develops this into the assertion that if the electors were negligent in carrying out their function, the Pope had the right to appoint the emperor.[1]

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[1] Id. id., iv. 17, 13 (Recognoscat). De facto, nam de jure subest Imperatori Romano, ut quidam dicunt, nos contra, immo Papæ; cf. ii. 27, 23: Alii tamen dicunt quod reges omnes in integrum restituunt, quia non sunt sic Imperatoribus subditi, sed Papæ soli in dubiis et gravibus articulis.

[2] Innocent IV., 'Apparatus,' i. 10, c. II. in VI. 'Grandi' (VI., i. 8, 2) (Utilitate) no. causas justas dandi curatores regibus, scilicet si nesciunt suum regnum defendere, vel in eo justitiam et pacem servare, et maxime religiosis personis, locis, et pauperibus, et etiam, quod plus est, si nesciunt perdita recuperare, et idem quod diximus in regibus, servandum est in ducibus, comitibus, et aliis qui habent jurisdictionem super alios. Aliis autem non datur curator, nisi sint furiosi, vel prodigi C. de cur. fur. (Cod., v. 70) (Assumptus) bene dicit, sit assumptus, q. per alios est enim hoc ordinarium, quod curatorem regibus et similibus personis petant subditi, et superior proximus debet ipsum concedere, et si non habet alium superiorem, Papa hoc facere debet arg. i. qui fil. sint legi. Per venerabilem (Decretals, iv. 17, 13) ff. de tu. et cu. da. divi (Dig., 26, 5, 24).

[3] Id. id., ii. 2, 17. Sol. Hic non consentit in alium judicem nisi suum, quia papa judex ordinarius est omnium, 9, q. 3. Cuncta (Decretum, C. 9, 3, 17).

The most comprehensive statement of Innocent IV.'s conception of the authority of the Pope in temporal matters is to be found in his observations on that Decretal letter in which Innocent III., while instructing the bishop of Vercelli to declare null and void any letters which might be produced from the Holy See dealing with matters which belonged to the secular courts of Vercelli, asserted that if the secular court failed to do justice, an appeal could be made to the bishop, or to the Pope himself, especially at a time when the empire was vacant.[2] Innocent IV. admits that the prohibition of the interference of the ecclesiastical authority with the normal jurisdiction of the secular court is right, but he draws out the significance of the right to intervene in the case of defect of justice in great detail, and especially lays stress upon the authority of the Pope during a vacancy of the empire. There is a special relation between the Pope and the emperor, he is "advocatus" of the Pope and takes an oath to him, and holds the empire from him, and therefore the Pope takes the emperor's place during a vacancy. (If Innocent IV. does not actually say that the emperor is a vassal of the Pope, he seems plainly to imply it.)

If other kings or princes who have no superior are negligent, the Pope succeeds to their jurisdiction, not because they hold the kingdom from him, but in virtue of that fulness of power (plenitudo potestatis) which he possesses as vicar of Christ. Some say that the Pope must not interfere in the affairs of vacant kingdoms unless appeal is made to him.[1]

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[1] Id. id., i. 6, 34. Sed eis negligentibus eligere, imperatorem Papa eliget, et si plures elegerunt, Papa de jure cognoscet inter eos, et diffiniet et si aliqua partium erit contumax, nihilominus parte altera absente potest procedere.

[2] Decretals, ii. 2, 10.

After enumerating the various cases in which the ecclesiastical judge can interfere in matters belonging to the secular jurisdiction, he answers the objection which may be made that these principles rest only upon the decisions of the popes themselves, and warns men that in arguing thus they are incurring the guilt of sacrilege. In order to make this clear, he sets out his conception of the origin and nature of the government of the world.

From the creation of the world to the time of Noah, God governed the world, he says, directly. From Noah to the coming of Christ God governed the world by various ministers, patriarchs, judges, kings, priests, and others. This continued till the coming of Christ, who was Himself the natural lord and king. Christ established Peter and his successors as His vicars. Therefore, though there are many different offices and forms of government in the world, men can always have recourse to the Pope when need arises, whether it is a difficulty about law, and the judge is uncertain what judgment he ought to give, or a practical difficulty when there is no superior, or when the judges cannot secure the execution of their judgments, or will not render justice.[1]

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[1] Innocent IV., 'Apparatus,' ii. 2, 9. (Irritas.) Cum enim papa in eis jurisdictionem non habeat, jurisdictio vel literæ datæ contra eos non valent, nec quod per eas fit, arg. C. ne de sta. defun. l. pen. (Cod., vii. 21, 7) et videtur mirum quod post subjungit dummodo etc., quia, si irritæ sunt quo. modo scilicet per negligentiam convalescunt. . . . Clausula autem quæ hic aducitur, *s.*, dummodo etc., non contradicit, quia non est sensus eius literæ, ut literæ prius impetratæ valeant, si contingit judicem secularem fieri negligentem. Sed hoc vult dicere quia cum fuerit negligens, quod ab eo possit appellari ad Papam et super appellationem licite aliæ literæ impetrari. (Ad tuam.) Hoc jus habet episcopus in terra, quod ad eum appellatur, sed ad Papam jure imperii appellatur. (Vacante.) Hoc est propter defectum imperii, in jure enim tantum imperii papa succedit. . . . Nam specialis conjunctio est inter Papam et Imperatorem, quia Papa eum consecrat et examinat et est Imperator ejus advocatus, et jurat ei, et ab eo imperium tenet, *s.* de electione, venerabilem (Decretals, i. 6, 34), *i.* 63 dist. ego et c. tibi domino (Decretum, D. 63, c. 30 and 33). Et inde est quia in jure quod ab ecclesia Romana tenet, succedit Papa, imperio vacante. . . . Sed quid si alius rex est negligens vel alius princeps, qui superiorem non habet? diximus idem, scilicet quod succedit in jurisdictionem ejus, arg. 15, q. 6, item alius (Decretum, C. xv. 6, 3) et *s.*, de electione, quum inter universas, in fi. (Decretals, i. 6, 18.) Sed hoc non facit quia ab eo teneat regnum, sed de plenitudine potestatis quam habet quia vicarius est Christi, *s.*, tit. prox. novit ver. non enim (Decretals, ii. 1, 13) vel dic, quia vacantibus regnis, non poterit se intromittere, nisi ante peteretur in modo denunciationis, ut predicto c. novit (Decretals, ii. 1, 13).

To complete the account of the position of Innocent IV., we may observe that he is clear that the authority of the Pope extends not only over Christian people, but over the infidels and the Jews. He refers to this at the end of the passage which we have just been considering, and develops it at length in a later passage.[2] In this place also he appeals to the evidence of the "Donation of Constantine" as showing that the Pope now held the authority of the Roman Empire, but he admits that it might be argued that this applied only to the West.[1]

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[1] Id. id. Sed dicet aliquis, hoc summi pontifices statuere pro se: unde quum non sine culpa sacrilegii loquatur, non est sibi tanta fides adhibenda, ff. de inter. ac l. de ætate, § 1 (Dig., xi. 1, 11). Sed hi si diligenter attendunt quod dicunt, veri sacrilegii culpam incurrunt. Quod ut melius intelligas, est prenotandum, quod Deus creavit in principio cœlum et terras, et omnia quæ in eis sunt, angelicam et humanam naturam, spiritualia et temporalia, ipsaque per se ipsum rexit, sicut factor rem suam gubernat, et homini quem fecit præcepta dedit, et transgredienti pœnam imposuit, ut Gen. II., Ex omni ligno, etc. . . . Et tempore Noe, coepit Deus creaturas suas regere per ministros, quorum primus fuit Noe. . . . In hac autem vicaria successerunt patriarchæ, judices, reges, sacerdotes et alii, qui pro tempore fuerunt in regimine populi Judeorum, et sic duravit usque ad Christum, qui fuit naturalis Dominus et Rex noster, de qua dicitur in Psal.: Deus judicium tuum regi da, etc. . . . Et ipse Christus Jesus, vicarium suum constituit Petrum et successores suos, quando ei dedit claves regni cœlorum, et quando dixit ei: Pasce oves meas. Licet in multa distincta sunt officia et regimina mundi, tamen quandocunque necesse est ad Papam requirendum est, sive sit necessitas juris, quia judex dubius est, quam sententiam de jure proferre debeat, vel necessitas facti, quia alius non sit judex superior, sive facti, puta quia de facto minores judices non possunt suas sententias exequi, vel nolunt ut debent justitiam exercere, *i.*, qui filii sint legi., per venerabilem (Decretals, iv. 17, 13). Cf. id., v. 39, 49.

[2] Id. id., iii. 34, 8. Bene tamen credimus quod Papa qui est vicarius Jesu Christi, potestatem habet, non tantum super Christianos, sed et super omnes infideles; quum enim Christus habuerit super omnes potestatem, unde in Psalmo, Deus judicium tuum regi da . . . Omnes autem tam fideles quam infideles oves sunt Christi, per creationem, licet non sint de ovili ecclesiæ. Et sic per predictam apparet quod Papa super onmes habet jurisdictionem, et potestatem de jure, licet non de facto. Unde per potestatem quam habet Papa, credo quod si gentilis, qui non habet legem nisi naturæ, si contra legem naturæ facit, potest licite puniri per Papam. . . . Item Judeos potest judicare Papa, si contra legem Evangelii faciunt in moralibus, si eorum prelati eos non puniunt, et eodem modo si hereses circa suam legem inveniant. . . .

When we endeavour to sum up the principles which Innocent IV. thus set out with regard to the authority of the papacy in temporal matters, it is, we think, evident that he had developed the incidental phrases and suggestions of Innocent III. into something like a definite system.

As we have said, he did not in so many words say that the emperor was the vassal of the Pope, but he maintained not only that the Pope had the right to reject an unfit candidate for the empire, and the right to decide in disputed elections, but that, failing the action of the electors, he could himself appoint; and he definitely says that the emperor held the empire from him.

He claimed to be the ultimate "superior" of all States, and this in virtue of the fact that he was the vicar of Christ, for Christ was lord and king of all the world, and had committed his authority to Peter and his successors, the popes. It does not seem too much to conclude that in Innocent IV.'s view all temporal as well as spiritual power in principle belonged to him.[2]

The canonical theory of the temporal authority of the papacy had thus been profoundly modified by Innocent IV., and it is to this that we must trace the principles represented by Hostiensis and William Durandus.

It is natural that it is in discussing the relations of the emperor to the papacy that this is chiefly developed, though, as we shall see, their theory is not limited to this.

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[1] Id. id. Item terra sancta justo bello victa fuit ab imperatore Romano post mortem Christi, unde licitum est Papæ ratione imperii Romani quod obtinet, illud ad suam jurisdictionem revocare, quia injuste expoliatus est, et ab eo qui non habuit jus spoliandi eum. Et hæc ratio sufficit in omnibus aliis terris, in quibus imperatores Romani jurisdictionem habuerunt, licet posse dici, quod hoc jure, scilicet ratione imperii non possit, cum ecclesia non habeat imperium nisi in occidentem, 96 Dist. Constan. (Decretum, D. 96, 13, 14).

[2] Cf. his interpretation of the Donation of Constantine cited on p. 306.

Hostiensis' treatment of the subject is set out in great detail in a passage in his 'Summa Decretalium,' in which he discusses and develops the implications of the well-known Decretal letter of Innocent III. as to the propriety of his legitimising the children of the Count of Montpellier, 'Per Venerabilem.'[1] He sets out his own conclusions with confidence, but it should be observed that he recognises that other Canonists had taken a different view.

It is, he says, contended by some that the Pope should not interfere in such a matter as legitimisation for secular purposes, but should leave this to the emperor; on the other hand, it may be argued that the Pope can and ought to interfere in temporal matters. He first cites a Canonist whom he designates H. (Huguccio) as saying that the emperor holds his power over temporalities from God only, as the Pope holds his power in spiritualities, and thus the two jurisdictions are distinct. He then cites the two Canonists, Alan and Tancred, as maintaining that while the "imperium" comes from God only, the emperor receives the use of the temporal sword from the Church, and that therefore the Pope is greater, and can use both swords, for the Lord and Moses used both swords.

Having thus set out the antithetical judgments, he gives his own opinion in careful and measured terms. He begins by maintaining that the two jurisdictions are not only distinct, and that each comes from God, but the spiritual comes much nearer to God, and is therefore the greater. The "Sacerdotium" and the "Imperium" do not differ much as to the source from which they proceed, but they differ greatly in majesty. It is this, he says, which is symbolised in the difference between the unction of the bishop and the king. The difference is like that between the sun and the moon. He admits that this analogy had been differently interpreted by various doctors, but he urges that it may be properly said that as the moon receives its light from the sun, so the royal power receives its authority from the priestly, and as the sun illuminates the world by means of the moon at night, so the priestly office illuminates the world by means of the royal, in those matters which it cannot deal with itself, such as the judgment of blood.

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[1] Decretals, iv. 17, 13, Per venerabilem. Cf. vol. ii. p. 232.

He concludes, therefore, that while the two jurisdictions are distinct, as far as their exercise is concerned, the emperor holds the empire from the Roman Church, and may be called its "Officialis" or vicar. It was the Roman Church which transferred the empire to the Germans. The Pope therefore confirms and anoints and crowns the emperor, and can censure and even depose him. The Pope is therefore the superior, but he should not interfere with that which has been properly done by the emperor in temporal matters, except perhaps in special cases (in casibus); the Pope, therefore, takes the place of the ruler in the vacancy of the kingdom or empire.

There is thus "quoad majestatem" only one head—namely, the Pope, for there is only one God, one Head, the Lord of things spiritual and temporal, and he committed all things to Peter, and Peter had both swords. The Lord of Lords gave him two keys, not one only, the one for spiritual, the other for temporal things. (Hostiensis is, however, careful to add that the words of our Lord had been interpreted in many other ways.) We are one body in Christ, and it would be monstrous that we should have two heads. This is what is implied in the Donation of Constantine, and if any one were to maintain that Constantine had not the right to grant this, he might as well say that the people had not the right to transfer their authority to the prince.[1]

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[1] Hostiensis, 'Summa super titulis decretalium,' iv. 17, 13 (Qui filii sunt legitimi), 9: Qualiter et a quo filii illegitimi legitimentur, vel sui fiant. Et quidem, legitimantur per principem temporalem, quo ad temporalia, per spiritualem quo ad spiritualia: quia jurisdictiones sunt distinctæ: ut in authent. quomodo oportet episcopo, in principio collationis (Nov. Justinian. VI. Præf.) *i.* de consecr. dist. III., celebritatem, in fin. (Decretum, de cons. D. III., 22, 2). Non ergo papa debet intromittere se de legitimatione facienda, quo ad temporalem hereditatem, sed debet hoc dimittere imperatori, ut dist. VIII., quo jure (Decretum, D. 8, 1), *i.*, c. lator et c. causam (Decretals, iv. 17, 5, 4), alias poneret falcem in messem alienam; ut *s.* de electione,

In his "Commentary" on the Decretals he adds two important contentions, that if the electors are negligent and do not elect an emperor, the Pope elects. If several are elected

venerabilem (Decretals, i. 6, 34) quod non est faciendum ut 6, q. 3, c. 1 (Decretum, C. 6, 3, 1).

Sed contra, quia Papa etiam de temporalibus, se potest et debet intromittere *i.* eo c. 1 (Decretals, iv. 17, 1), XX., q. III. præsens (Decretum, C. 20, 3, 3) XV., q. VI., Alius (Decretum, c. 15, 6, 3) XXIV., q. 1. loquitur (Decretum, c. 24, 1, 18). H. dixit quod imperator a solo Deo habet potestatem in temporalibus, papa in spiritualibus, et sic jurisdictiones sunt distinctæ, ut dicunt primæ concordantiæ: tamen coronam recipit a Papa et gladium ab altari, 93. Dist. legitimos (?), et etiam ante fuit Imperium quam apostolatus. Ala. et T. dixerunt, quod quamvis imperium a solo Deo dicatur processisse, executionem tamen gladii temporalis accepit ab ecclesia, quare Papa major est: et utroque gladio uti potest. Nam et Dominus utroque gladio usus est, et Moyses, ad hoc *s.* de ju. novit (Decretals, ii. 1, 13), et de majo. et ob. solitæ (Decretals, i. 33, 6). Ego jurisdictiones distinctas assero: et utramque a Deo processisse: ut dicit auth. quo modo oportet episcopos (Nov., VI., Pref.) tamen quanto altera magis Deo appropinquatur tanto major est: ergo sacerdotium majus. Quod probatur ex ordine scripturæ dictæ auth. (Nov., VI., Pref.); et sic intellige, quod non multum discrepant sacerdotium et imperium, ut in authent. de alien. aut permut. re eccles. § si minus col. II. (Nov., VII., 21). Non multum discrepant quo ad principium unde procedunt, sed multum discrepant, quo ad majoritatem. Inde est quod caput episcopi inungitur, sed armis regis: et episcopus chrismate, et rex oleo, ut scias, quod episcopus est vicarius capitis nostri id est Christi, et ut ostendatur quanta sit differentia inter authoritatem pontificis et principis potestatem, ut *s.* de sa. un. c unico § unde in veteri testamento, et præcedenti (Decretals, i. 15, 1, 5). Quia quanta est differentia inter solem et lunam tanta est inter sacerdotem et regalem dignitatem, ut *s.* de majo. et. obe. solite § præterea ad fin. (Decretals, i. 33, 6 § 4). Quæ verba licet per doctores diversimode exponantur, tu tamen dic quod sicut luna recipit claritatem a sole, non sol a luna, sic regalis potestas recipit authoritatem a sacerdotali, non e contra; sicut etiam sol illuminat mundum per lunam, quando per se non potest, scilicet, de nocte, sic sacerdotalis dignitas clarificat mundum per regalem, quando per se non potest, scilicet ubi agitur de vindicta sanguinis, ut no. *s.*, ne cle. vel mona. § quæ sunt permissa clericis vers. episcopus. (Decretals, iii. 50, 5) unde et l. secularis debet servire canonicæ, 10 di. lege (Decretum, D. 10, 1) *i.* de privi, c. 2 (Decretals, v. 33, 2). Per hoc etiam innuitur. quod septies millies et sexcenties et quadragesies quater, et insuper ejus medietatem est major sacerdotalis dignitas quam regalis . . . . . .

Et in summa hujus majoritas comprobatur, tum ratione ordinis scripturæ ut dixi, *s.*, ver. ego, tum ratione subjecti, quod nobilius et majus est, ar. C. de sacros, ec. sancimus (Cod., ii. 1, 22), XII., q. 1 cepimus (Decretum, C. 12, 1, 24), et quanto quis melioribus preest, tanto magis ipse major et honestior est. in auth., de defenso. civi. § nos igitur. Col. III. (Nov. 15, Pref.). Tum ratione naturali, ut patet, *s.* e. ver. qui verba et seq. Item, contra sicut et *s.* præter naturalem et humanam rationem filius Dei incarnatus et natus est, sic jurisdictio spiritualis quam ecclesiæ reliquit contra et *s.*

it is for the Pope to hear and determine, and if one of those elected is contumacious, he can proceed in his absence. If the claims of the various persons are equal, he can decide as

præter naturam jurisdictionis trahit ad se principalem jurisdictionem temporalem, si id quod de jurisdictione spirituali est in ea incidat. . . .

10. Tum authoritatibus sanctorum dicentium, quod quanta est differentia inter metalli plumbum, et auri fulgorem, etc., ut 96 Dist. duo sunt, et c. cum ad verum (Decretum, D. 96, 10 et 6). Ideo quamvis jurisdictiones sunt distinctæ quoad executionem, tamen imperator ab ecclesia Romana imperium tenet, et potest dici officialis ejus, seu vicarius. Ecclesia Romana in personam magnifici Caroli a Græcis transtulit imperium in Germanos. Et Papa ipsum confirmat, et inungit, et coronat, vel reprobat, et etiam deponit, ut patet *s.* de ele., venerabilem (Decretals, i. 6, 34). Nec enim lex imperatoris legare potest nisi illos quos Romanorum lex tenet, et ecclesiæ catholicæ sanctio. Quia extra non est imperium. ut in auth.: de non alie. aut permu. re ec. § pen. col. II. (Nov., VII., Epil.). Ergo Papa superior est argu. *s.* de ele. innotuit (Decretals, i. 6, 20) ff. de arb. nam magistratus (Dig., 4, 8, 4) *s.* de majo. et obe. cum inferior (Decretals, i. 33, 6). Verum tamen quod rite factum est, per imperatorem in temporalibus, non debet infringi per Papam, nec debet se intromittere de subditis imperatoris, nisi forte in casibus, sicut dicitur de archiepiscopo quoad subditos suffraganeorum ut no. *s.* de offi. ord. quid pertinet ad officium suum, versi. est autem archiepiscopus (Decretals, i. 31) et seq. et hoc expressim comprobatur *s.*, eo. per venerabilem § rationibus ibi, verum etiam in aliis regionibus, etc. (Decretals, iv. 17, 13).

Ergo vacante regno et imperio succedit Papa, ut *s.* de elect: inter universas (Decretals, i. 6, 18) et no. casus *s.* de fo. comp. quibus ex causis versi item in curia Romana et seq. (Decretals, ii. 2, 10).

Nec mirum quia Christus reliquit ipsum successorem, seu vicarium suum proximiorem, et majorem, ut *i.*, e per venerabilem § sane. (Decretals, iv. 17, 13), *s.* de transl. quanto (Decretals, i. 7, 4). Ergo quo ad majoritatem, unum caput est tantum, scilicet Papa: unus debet tantum esse caput nostrum, dominus spiritualium et temporalium: quia ipsius est orbis et plenitudo ejus: ut *s.* de deci. tua nobis (Decretals, iii. 30, 26). Quia omnia commisit Petro, *s.*, de maio. et obe. solitæ (Decretals, i. 33, 6) et de elec. signific. in fi. (Decretals, i. 6, 4), et Petrus utrumque gladium habuit. Unde dixit, ecce duo gladii hic. Ideo etiam, dominus dominorum, non sine causa, dixit Petro: "Et tibi dabo claves regni cœlorum," et no. non dixit clavem, sed claves, scilicet duas, unam quæ claudat, et aperiat, liget et solvat quo ad spiritualia, aliam qua utatur quoad temporalia. Licet hoc verbum multis aliis modis exponatur, ut no. *i.*, de poe. sub. rub. de remissionibus (Decretals, v. 38), ad hoc *i.* per venerabilem § rationibus (Decretals, iv. 17, 13), XL. dist. c. 1 (Decretum, D. 40, 1), 21 dist. in novo (Decretum, D. 21, 2), XX. di. (Decretum, D. 20, Pref.) cum enim unum corpus simus in Christo, pro monstro esset, quod duo capita haberemus, ut *s.* de off. ord. quoniam (Decretals, i. 31, 14). Hoc etiam expressim innuitur 96 Dist. Constantinus (Decretum, D. 96, 4) et si dicas Constantinus non potuit illa concedere, respondebo, ergo nec populus potestatem suam in principem transferre, quod tamen falsum esse constat; super quo vide quod no. *s.* de Constit. quis possit, versi item populus et seq.

he pleases.[1] This is a somewhat large interpretation of the well-known Decretal letter of Innocent III., and is no doubt based on Innocent IV.

Some of these judgments are related to the emperor alone, but others have a more general significance, and we must therefore turn to some other passages in his works. In his "Commentary" on the Decretals we have some important statements on the relations between the temporal and spiritual powers in general. The spiritual power is superior to the earthly in three points: in dignity, for the spirit is greater and more honourable than the body; in time, for it was earlier; and in power, for it not only institutes the temporal power but also has authority to judge it, while the Pope cannot be judged by any man, except in cases of heresy.[2] In another passage in his 'Summa' he again says that the Pope has both swords, and that he thus deposes kings, and not only creates kingdoms but transfers them. For the Pope receives from God alone the authority of the earthly and heavenly empire.[3]

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[1] Hostiensis, 'In Decretalium Libris Commentarii,' i. 6, 34 (21), Electoribus igitur negligentibus imperatorem eligere, Papa eliget, et si plures electi sunt, de jure utriusque cognoscet, et diffiniet, et si aliqua partium contumax fuerit, non obstante ipsius absentia, in causa procedit, *i.* eo. extra. d. n. statuimus (Decretals, VI., i. 6, 1). Et si omnia paria sunt favere potuerit cui voluerit.

[2] Hostiensis, 'In Decretalium Libris Commentarii,' i. 15, 1, 40. Spiritualis (potestas) prior est terrena in tribus, scilicet, in dignitate sive majoritate, in quantum spiritus est major et dignior quam corpus. . . . Item prior est institutione . . . demum per sacerdotium, jubente Domino, regalis potestas est ordinata, . . . sed et prior est in potestate sive auctoritate, nam spiritualis autoritas terrenam potestatem instituere habet ut sit; judicare autem si bona non fuerit (I., Cor. VI. "Nescitis quoniam angelos judicavimus, quanto magis secularia"). . . . Ipsa tamen spiritualis et si deviet a nemine judicatur, . . . quod de Papa omnino verum est, 9, q. 3. Nemo. etc. c. aliorum (Decretum, C. 9, 3, 13), excepto crimine hereseos, XL. D. si Papa (Decretum, D. 40, 6).

[3] Hostiensis, 'Summa super titulis Decretalium,' i. xv. 8. Nam ab illo (Papa) omnis dignitas ecclesiastica originem sumit. XXII., di. c., I. (Decretum, D. xxii. 1), et utrumque gladium habet, XXI., dist. c. I. (Decretum, D. xxi. 1), LXIII., dist. tibi domino (Decretum, D. 63, 33); unde et reges deponit, ut XV., q. VI., alius, et c. nos sanctorum et c. curatos (Decretum, C. xv., 6, 3, 4, 5), 1 q. IV., quia præsulatus (Decretum, C. i. 4, 5), 96, dist. duo sunt (Decretum, D. 96, c. 10); et non solum regnum constituit, immo transfert. *s.*, de ele. venerabilem (Decretals, i. 6, 34) . . .

In another passage in the "Commentary" he discusses that Decretal letter of Innocent III. in which, while forbidding an appeal in ordinary circumstances from the secular courts at Vercelli to the papal, he allows this in cases of a failure of justice, especially in the vacancy of the empire, and where there was no superior to whom appeal could be made. Hostiensis founds upon this the conclusion that if a king or other prince, who has no superior, dies, or is negligent in administering justice, the Pope succeeds to his jurisdiction, and this is founded not on the "jus commune," but on the "plenitudo potestatis" which the Pope possesses as the vicar of Christ. Hostiensis, however, admits that there is a difference of opinion about this.[1]

Perhaps the most remarkable illustration of the position of Hostiensis is to be found in another passage in his 'Summa,' where he discusses that well-known Decretal letter of In-

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et quod (Romanus pontifex) a solo Deo recipit potestatem terreni simul et cœlestis imperii, 21, dist. omnes (Decretum, xxii. 1).

[1] Hostiensis, 'Commentarii,' ii. 2, 10, 4 (vacante). Hoc est propter defectum imperatoris in cujus jure tamen papa succedit, unde et si alius rector, alii superiori quam imperatori subditus, mortuus esset, vel vivus negligens reperiretur in reddenda justitia; tunc non devolvetur jurisdictio ad Papam sed ad primum superiorem. Si quæras rationem diversitatis, hæc est, quia sicut alias in consimili casu legitur, non est tanta communio inter papam et inferiores quanta in eundem et imperatorem . . . nam specialis est conjunctio inter papam et imperatorem, quia ipsum examinat, approbat et inungit, et imperator ei jurat tamquam domino, et ab eo tenet imperium et ejus est advocatus ut colligitur, *s.*, elec. venerabilem (Decretals, i. 6, 34) et 63 Dist. ego Ludovicus, et c. tibi domino (Decretum, D. 63, 30, 33). Et inde est quia, de jure imperii quod ab ecclesia Romana tenet imperator, succedat Papa imperio vacante. . . . Quid si rex vel alius princeps qui superiorem non habet, mortuus est, vel in reddenda justitia negligens reperitur? Respondeo tunc dicendum est idem, quia in jurisdictione succedit, ar. XV., q. 6, alius (Decretum, C. 15, 6, 3), *s.*, de electione, cum inter universas ad fi. (Decretals, i. 6, 18). Sed si principatus non tenetur ab eo, non facit hoc de jure communi, sed de plenitudine potestatis, quam habet, quia vicarius est Jesu Christi, *s.* tit. I. novit. versi. non enim et sequenti (Decretals, ii. 1, 13). Vel dic, quia vacantibus regnis non habet se intromittere papa, nisi in modum denunciationis ut in eo. i. novit, secundum d. n. cujus est hæc tota glo. (Innocent IV., Apparatus, in c. 13, Decretals, ii. 1). Tu vero dicas quia vacantibus regnis et principatibus quibuscunque judex etiam secularis negligens est in justitia exhibenda, Papa non solum de plenitudine potestates, sed etiam de iure et consuetudine potest et debet iustitiam facere.

nocent III. in which he repudiated all intention of interfering with the jurisdiction of the King of France, or with the feudal court, but claimed the right to intervene on the ground that the King of England had complained that the King of France had "sinned" against him; for questions concerning sin belonged to his jurisdiction, and especially if they involved the maintenance of peace and the sanctity of an oath. Hostiensis seems, as we understand him, to be alarmed lest the letter of Innocent III. should be interpreted as meaning that the Pope did not possess both swords, that the temporal and spiritual jurisdictions are distinct, that the "Sacerdotium" and the "Imperium" proceeded from the same source, and that therefore the Pope should not interfere in temporal matters except in such special cases as when the secular judge was negligent, or when the "Imperium" was vacant. As we understand him, Hostiensis himself contends that the Pope is greater than the emperor, for Christ gave to Peter the laws both of the heavenly and the earthly empire, and he holds both the swords, although he entrusts the exercise of the temporal sword to emperors and kings. It is the proper function of the Church to maintain peace, and to cause it to be kept. He concludes by saying that all causes which involve the question of an oath, or the defect of justice, or of peace, or of sin, can be brought before the Church.[1]

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[1] Hostiensis, 'Commentarii,' ii. 1, 13, 1: Per hoc quod dicitur, hic patet, quod Papa non habet utrumque gladium, et quod jurisdictiones sunt distinctæ. Ad idem, 96. di. cum ad verum (Decretum, D. 96, 6), *i.* de appel. si duobus (Decretals, ii. 28, 7). Immo sacerdotium et imperium ab eodem principio processerunt, in authent. quomodo o. e. in principio. coll. I. (Nov. I., VI., Pref.). Ideoque Papa non habet se intromittere de temporalibus, *i.* qui fil. sint legi. causam (Decretals, iv. 17, 7). Nisi in subsidium, puta cum judex secularis negligens est, vel cum vacat imperium. . . . Sed videtur quod Papa sit major imperatore. . . . Petro enim jura cœlestis et terreni imperii a domino sunt commissa. 22 Dist. c. I. (Decretum, D. xxii. 1), et utrumque gladium ipse habuit. Unde et ipse ait Luc., XXII.: "Ecce gladii duo hic." Quem potestatem ad suos successores transmisit XL., D. c. 1 (Decretum, D. 40, 1), executionem tamen gladii temporalis imperatoribus et regibus dimisit. Quædam enim aliis possumus committere quæ nobis non possumus retinere, ut patet, *i.*, de Inst., c. fin, et XII., q. 2, quatuor (Decretals, iii. 7, 7: Decretum, C. xii. 2, 27, 28) (contra pacem) Ad ecclesiam enim spectat pacem servare, et facere observari ut l. et no. *s.*, de tre, et pac., c. f et 2 (Decretals, i. 34, 1, 2) *s.* de transa. c. fi. (Decretals

If we endeavour to put together the various aspects of the theory of Hostiensis on the relations of the temporal and spiritual powers, the first thing that seems to us obvious is that he continues the method of Innocent IV.—that is, he draws out all the possible significance of phrases used by Innocent III. into large general principles. It should be observed that he is quite clear that the secular power is divine in its origin and nature. There is no trace of the supposed conception that secular authority was in its own nature evil.

While, however, he conceived of it as coming from God, he was also clear that it was not only inferior to the spiritual power in dignity, but that it was derived from God through the spiritual power. For both swords belong to the Pope, and it is from him, and subject to his control, that emperors and kings wield the temporal sword. The Pope retains the right to reclaim the direct authority even in temporal matters, in virtue of the "plenitudo potestatis" which he possesses as the vicar of Christ, in such cases as the vacancy of the empire or of any kingdom, or of incompetence or defect of justice in the ruler, and in all cases of sin.

These principles apply to all political societies, but he looks upon the empire as being even more strictly subordinated to the papacy. He maintains that the Pope has the right to hear and determine all cases of disputed elections, and while he does not actually say that the emperor was a vassal of the Pope, he holds that he may properly be called an "officialis" and vicar of the Holy See.

How far then do these judgments of Hostiensis correspond with those of other canonical writers of the middle and end of the thirteenth century? We shall find some interesting parallels in earlier as well as later writers.

One of the earliest commentators on the Decretals was Godfrey of Trano, and while we have not found in his work

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i. 36, 11), XXIV., q. III., si quis romipetas, et c. paternarum (Decretum, C. 24, 3, 23, 24). . . . No. ergo quod quælibet causa potest deferri ad ecclesiam ratione juramenti, defectus justitiæ, pacis et peccati, ut ex premissis colligi potest.

any direct discussion of the relation of the papacy itself to the temporal authority, it is significant that in concluding the discussion of the first title of the second book of the Decretals, 'De Judiciis,' he lays down very emphatically the principle that in all cases of defect of justice in the secular court, the aggrieved person has the right to turn to the ecclesiastical court, and he contends that there is nothing unreasonable in this, for originally all cases whether of the clergy or the laity were taken to the priest for judgment, and the layman is only returning to his original court. Incidentally he asserts that there was no such process for lack of justice from the ecclesiastical court to the secular.[1]

There was no doubt nothing new in this contention of Godfrey of Trano. We have pointed out elsewhere that this principle had been maintained by almost all the Canonists,[2] but Godfrey's contention is no doubt immediately related to the claim of Innocent III.,[3] that he had the right to receive the complaint of the King of England that the King of France had transgressed against him. Innocent is careful to say that he had no intention to dispute the authority of the feudal court, but he claims the right to interfere in any case of alleged sin—this belongs to his jurisdiction. (How far this claim was effective either in the case of Innocent III. or in the later and parallel case of Boniface VIII. is another matter, with which we deal elsewhere.)

The contention of Hostiensis that the emperor may properly be called the officialis or vicar of the Pope may be naturally compared with a statement of a Canonist and Civilian of the first half of the thirteenth century, Roffred of Beneventum. In one of his works where he discusses the nature of the feudal relation, he maintains that the emperor—*i.e.*, Frederick II.—held Sicily as a fief from the Pope, and he adds that many said the same thing about the empire.[1] This is, as far as we have seen, the first appearance of the suggestion that the emperor was a vassal of the Pope, after the famous but ambiguous phrases of the letter of Pope Hadrian IV. to the Emperor Frederick Barbarossa in 1157.[2] It is true that Hostiensis is careful to avoid saying that the emperor is a vassal of the Pope, but his terms are at least not very far removed from this.

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[1] Goffredus de Trano, 'Summa super titulos Decretalium,' ii. 1 (fol. 28). In summa notandum est quod quamvis deficiente judice seculari succedat ecclesiasticus, ut *i.*, ti. pr. cum sit generale et c. licet in fine (Decretals, 8, 10) nec tamen hoc convertitur, ut *i.*, e. ti. qualiter (Decretals, ii. 1, 17). Nec obstat autem, ut clerici apud proprios episcopos (nov. VI.) et XI. q. si quis cum clerico (Decretum, C. xi. 1, 45). Nam puto illis juribus derogatum. Nec de diversitate superioris mireris. Nam olim omnes causæ clericorum et laicorum deferebantur ad sacerdotes ut *i.* qui fi. sunt legi. per venerabilem (Decretals, iv. 17, 13), XI., q. 1. Sacerdotibus, et c. relatum (Decretum, C. xi. 1, 41, 4). II. q. V., si quis presbyter (Decretum, C. 2, 5, 4). Et ideo si laicus redeat ad suum primarium forum, non videtur ejus conditio deterior fieri.

[2] Cf. 'History of Mediæval Political Theory,' vol. ii. p. 238-292.

[3] Decretals, ii. 1, 13.

Another Canonist, contemporary with Hostiensis, Bonaguida of Arezzo, in his treatise on 'Dispensationes' summarises the various aspects of the position and authority of the Pope in terms which are parallel to those of Hostiensis. The Pope, he says, is above all councils and laws, he has no superior; it is he who has on earth the fulness of power (plenitudo potestatis), he is the vicar of Christ and holds the place of God; it is he who binds and looses in heaven and on earth, to him God has committed the laws of the heavenly and the earthly kingdom; he has both swords, the spiritual and the temporal; the Pope is the successor of Peter and the vicar of Jesus Christ; it is he who confirms and consecrates and crowns the emperor, and confers upon him the "exercise" of the temporal sword, and it is he also who deposes him, as Innocent IV. had deposed Frederick.[3]

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[1] Roffredus de Benevento, 'De Libellis et Ordine judiciorum,' v. (fol. 118). "Nunc de vasallis videamus, et quidem vasalli sunt, qui rem aliquam ab aliquo in feudum recipiunt, sicut dominus imperator a papa habet regnum Siciliæ, et multi de imperio idem dicunt."

[2] M. G. H., 'Constitutiones,' Vol. i. 164.

[3] Bonaguida d' Arezzo, 'De dispensationibus,' 80: Solus Papa præmissa multaque alia potest, de quibus pauca infra, quodam compendio adnotemus. Ipse est supra omne concilium et omne statutum . . . ipse est qui superiorem non habet . . . ipse coeleste habet arbitrium . . . 81. Ipse est qui in terris habet plenitudinem potestatis . . . Ipse est vicarius Jesu Christi et vicem ac locum veri Dei tenet . . . 83. Ipse est qui absolvendo in terris absolvit

It is, however, in the most important canonical writer of the latter part of the thirteenth century, that is, William Durandus, that the most complete parallel with the position of Hostiensis is to be found.

The Pope, he says, has both swords, he is the successor of Peter, and the vicar of Christ, he has the "plenitudo potestatis"; what he pleases has the force of law, he rules and judges all things, for the laws of the heavenly and earthly empire have been given him by God.[1]

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in cœlis et in terris, ligat in cœlis . . . quodcunque vinculum cujus nemo contemnat, quia non homo sed Deus ligat, qui dedit homini hanc potestatem . . . 84. Ipse est qui semper et ubique utitur palio in signum plenitudinis potestatis. 85. Ipse est cui nemo dicere potest, cur ita facis . . . ipse est apud quem est pro ratione voluntas, quia quod ei placet legis habet vigorem . . . 86. Ipse est solutus a legibus . . . digna vox tamen majestate regnantis esse legibus alligatum se principem profiteri . . . ille est qui voce divina præfertur omnibus christianis . . . 87. Ipse est cui jura cœlestis et terreni imperii a Deo quidem commissa sunt . . . ipse est qui habet utrumque gladium, spiritualem et temporalem, unde in Evangelio "Ecce duo gladii sunt hic," et dominus noster cujus vices ipse gerit, utroque gladio usus est . . . et Moises in vetere Testamento utrumque gladium habuit et Christus in novo. Solum beatum Petrum principem fecit et suum vicarium reliquit, et ipse Papa successor est Petri, et Jesu Christi vicarius . . . 88. Ipse est qui confirmat, consecrat et coronat imperatorem . . . Et executionem gladii temporalis sibi committit, . . . et ipse post coronatum imperium et confirmatum deponit, . . . et in constitutione Innocen. IV. ubi deposuit Fredericum.

[1] Wilhelmus Durandus, 'Speculum,' i. p. 51 (de legato) (éd. Basil 1574).

Ipse (Papa) habet utrumque gladium, scilicet temporalem et spiritualem, ex commissione Dei, ut XXII., Dist. I. (Decretum, D. xxii. 1) et in Evangelio, "Ecce duo gladii," et Dominus cujus ipse vices gerit utroque usus est, ut x. di. quoniam (Decretum, D. x. 8), idem et 96 di. cum ad verum (Decretum, D. 96, 6), sed et alii quandoque haberent exercitium utriusque gladii, ut extra. de sent. ex. co. dilecto. libro VI. (Decretals, v. 11, 6).

Ipse est successor Petri et vicarius Jesu Christi, vicem non puri hominis sed veri Dei gerens in terris . . . unde ommia regit et disponit et judicat prout sibi placet . . . et quilibet episcopus sit quoad quædam vicarius Christi . . . Habet etiam Papa plenitudinem potestatis ad quam vocatus est. Alii vero in partem solicitudinis sunt vocati . . . et dummodo contra fidem non veniat, in omnibus et per omnia potest facere et dicere quicquid placet; auferendo etiam jus suum cui vult. quia non est qui ei dicat, cur ita facis . . . nam et apud eum est pro ratione voluntas, et quod ei placet legis habet vigorem (Inst., i. 2, 6). Potest etiam omne jus tollere, et de jure supra jus dispensare . . . item non habet superiorem . . . sed ipse super omnes est: non potest ab aliquo judicari . . . et habet in terris plenitudinem potestatis . . . item ei jura cœlestis et terreni imperii a Deo concessa sunt, ut XXII. Dist. c. I. (Decretum, D. xxii. 1).

The Pope is the "ordinarius" of all believers, and therefore acts in the place of the emperor or of any king or prince who has no superior, in the case of a vacancy; he admits, however, that there was some difference of opinion about this. The Pope has also power to intervene in any question of special difficulty or doubt, and in any question of peace. Rome is the "communis patria" of any "qui non habet jus revocandi forum."[1] These are notable phrases, especially the claim that the Pope is "ordinarius" not only of the clergy but of the laity. We have seen that Innocent IV. had used the phrase "iudex ordinarius." In other places again Durandus maintains that the emperor can be accused before the Pope, not only of heresy and sacrilege, but of any great crime, and that the Pope can depose the emperor or king who is convicted of any of these crimes; and that if they are not guilty but only incapable of ruling, he can give them guardians or "curatores."[2] This last clause is founded, as the text will show, on a Decretal letter of Innocent IV., afterwards embodied in the Text. It should, however, be observed that Durandus held that the Pope also can be accused of heresy by a council, or a prince, or the whole body of the faithful.[1] In another place again he maintains that the Pope approves and confirms the person elected to the empire, or he can reject him for just cause, and if several have been elected, he can give the empire to whomsoever he will. He consecrates and anoints and crowns the emperor, and can depose him even when he has been crowned. He mentions that some held that the emperor had the orders of a priest, while others said he was sub-deacon, but he gives his own judgment that he has no orders.[2]

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[1] Id., ii. De competentis judicis aditione (p. 397). Vacante imperio, cognoscit Papa vel ejus delegatus de feudo, extra. de fo. compe. licet. (Decretals, ii. 2, 10), vel etiam regno, vel principatu superiorem non habentibus, ut. XV., q. VI. alius (Decretum, C. 15, 6, 3). Item et extra de elec. cum inter universas, in fi. (Decretals, i. 6, 18). Quod ideo est, quia est ordinarius omnium fidelium, ut *i.* § proxi. Vel dic quod regnis vacantibus Papa se non intromittet nisi quando in modum denuntiationis petetur secundum Papam . . . cum quid imminet difficile vel ambiguum inter judices, recurritur ad ecclesiasticum, ut extra qui filii sint legiti. per venerabilem § Rationibus (Decretals, iv. 17, 13) . . . Ratione pacis, quia tunc intromittit se ecclesia de qualibet causa, extra de judi. novit. (Decretals, ii. 1, 13). . . . Ratione loci, unde Roma: quia communis patria est. convenitur quilibet, qui non habet jus revocandi forum, ff. ad munici. Roma (Dig., 50, 1, 33), V. q. II. vocatos (Decretum, C. v. ii. 1), extra de foro compe. c. fin (Decretals, ii. 2, 20), de dil. c. fi. (Decretals, ii. 8, 4), 9 q. IV. Cuncta (Decretum, C. ix. 3, 7), ff. de judi, si is qui Rome (Dig., v. 1, 34).

[2] Id. id., i. De accusato (p. 200): Sed dic quod imperator accusetur coram Papa de heresi, sacrilegio, et perjurio, et quolibet gravi crimine, et ab eo judicatur.

Id. id., i. De Legato (p. 46): (Papa) deponit imperatorem propter ipsius iniquitatem, ut extra de re judi. ad Apostolice, lib. VI. (Decretals, VI., 2, 14, 2), etiam reges ut XV., q. VI. Alius (Decretum, C. xv. 6, 3): et dat eis curatores, ubi ipsi sunt inutiles ad regendum, ut extra de sup. neg. prelat. grandi, li. VI. (Decretals, VI., i. 8, 2).

It would then seem evident that it was upon the principles and methods of Innocent IV. as a Canonist that the theory of the Canonists of the later thirteenth century, with regard to the temporal authority of the papacy, was founded; and that in their hands the theory took the form that, while the exercise of temporal authority was left to the secular ruler, it did in principle belong to the Pope, for it was derived from God through him, and he could, when need arose, reclaim it.

This chapter is, it will be observed, limited to the position of the Canonists with whom we have dealt. The character of the theory of other extreme papalist writers like Ptolemy of Lucca, if indeed he was the continuator of St Thomas' 'De Regimine Principum,' or like Henry of Cremona, requires another discussion, and these theories must not be confounded with the much more cautious and restrained position of St Thomas Aquinas himself.

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[1] Id. id., De accusato (p. 200): "Papa etiam tantum de heresi accusatur xl. di. si Papa (Decretum, D. 40, 6), et tunc vel a synodo vel a principe ut XXIII., q. v. principes (Decretum, C. xxiii. 5, 20), et 96 di. sicut quamvis et c. nos ad fidem (Decretum, D. 96, 15 et 2), vel a corpore fidelium, eu. dis. ubi nam (Decretum, D. 96, 4), vel si submittat se alicui judicio, 2, q. 7. nos si (Decretum, C. ii. 7, 41); ff. de jur. om. jud. et receptum (C. iii. 13): alias nunquam accusatur.

[2] Id. id., i. 2. De legato (p. 49): Approbat (Papa) electum in imperatorem et confirmat, vel infirmat, elec. ipsius, gratificando cui vult, cum sint plures in discordia electi: consecrat et inungit et coronat ipsum ut extra de elec. venerabilem (Decretals, i. 6, 34). Etiam justis ex causis repellit, ut ibi., et etiam jam coronatum deponit ut extra de re jud. ad apostolice lib. VI. (Decretals, VI., i. 2, 14, 2). Item ordinat eum, nam imperator ordinem habet, ut 63 Dist. Valentinus *in fine* (Decretum, D. 63, 3) et § principibus *in fine* (Decretum, D. 63. Dict. Grat. post c. 27). Dicunt enim quidam quod habet ordinem sacerdotalem, prout no. ff. de rerum divi. Sacra (Dig., i. 8, 9). Alii dicunt quod est subdiaconus. Tertii dicunt quod non est subdiaconus, sed episcopo in officio subdiaconatus ministrat. Tu dic quod nullum habet ordinem et quod dicitur in præ. c. juxta ordinem meum expone, id est officium. Habet enim caracterem militarem, ut 1, q. 1, quod quidam (Decretum, C. i. 1, 7). 50 Dist. si quis post (Decretum, D. 50, 61).

CHAPTER VI.

THE THEORY OF THE TEMPORAL POWER OF THE PAPACY IN VINCENT OF BEAUVAIS, PTOLEMY OF LUCCA, AND ST THOMAS AQUINAS.

We have seen the development in the Canonists of the theory that the temporal as well as the spiritual powers belonged in principle to the Pope, but we must not assume that this theory was accepted either by the ecclesiastical writers in general, or by those who represented the standpoint of the secular authorities. We must therefore examine the position of these writers, and we do so in this chapter with reference mainly to Ptolemy of Lucca and St Thomas Aquinas.

Before, however, we deal with these we may take account of some of the statements on the subject which Vincent of Beauvais thought to be sufficiently important to be included in his great encyclopædic work.

We may begin by observing that Vincent cites, as from Gratian's 'Decretum,' the words of Pope Gelasius in which he had said that Christ Himself separated the temporal from the spiritual office, and had given to each its own separate function.[1]

With this he cites a passage from a work of Hugh of St Victor which describes the Church as the "Universitas" of the faithful, which is the body of Christ, and says that the "Universitas" is composed of two orders, the clergy and the laity; two forms of life, the earthly and the heavenly; and two authorities, the secular and the spiritual; the head of the secular power is the king, the head of the spiritual power the Pope. As, however, the spiritual life is more honourable than the earthly, so the spiritual power excels the earthly in honour and dignity, and the spiritual power both institutes and judges the secular. The spiritual power was first created by God, and can only be judged by Him, and in the Old Testament the priesthood was first instituted by God, and afterwards the royal power was ordered by the priest, at the command of God.[1]

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[1] Vincent of Beauvais, 'Speculum,' vol. ii. 7, 31: "Mediator Dei et hominum homo Christus Jesus sic actibus propriis et dignitatibus dictinctis officia potestatis utriusque discrevit"

We may possibly conjecture that Vincent was using the passage for Hugh of St Victor as a comment on or explanation of the Gelasian passage, and that, while he recognised the authority of each power, he also wished to make it clear that the spiritual power was not only superior in dignity to the temporal, but also prior to it in time, and had its place in its creation and possessed a judicial authority over it.

This interpretation of Vincent's intention is confirmed when we observe that in the same place Vincent goes on to cite that letter in which Innocent III. had set out to the emperor, Alexius of Constantinople, the superiority of the ecclesiastical authority over the secular, and compared the Church to the sun and the king to the moon;[1] and, what is much more significant, Innocent III.'s citation in his letter to Philip Augustus of France of that Constitution of Sirmond which allowed any party in a law-suit to transfer the case to the Court of the Bishop.[2] In another place again Vincent cites, from a work which he calls 'Summa de Casibus,' a passage which lays down the far-reaching principle that the Church not only can excommunicate and depose any ruler, either for his own heresy or for negligence in extirpating heresy, but also can depose any secular prince for general negligence and incapacity, as Pope Zacharias deposed the King of the Franks and as Innocent III. deposed the Emperor Otto IV.[3] This is obviously related to the principle set out by Innocent IV., Hostiensis, and William Durandus,[4] but it goes a little further than Innocent and Durandus, for while they claimed that the Pope had the right in cases of incapacity and negligence to appoint a "curator" or guardian, and that the Pope "succeeds" to the prince's jurisdiction, the 'Summa de Casibus' says that the Pope can depose him.[5]

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[1] Id. id., 31, 'Hugo de Sacramentis,' li. 2: "Ecclesia Sancta i. universitas fidelium corpus Christi vocatur propter spiritum Christi quem accipit. . . . Universitas autem hæc duos ordines complectitur, laicos et clericos, quasi duo latera corporis unius: quasi n. ad sinistram sunt laici qui vitæ præsentis necessitatis inserviunt, clerici vero quum ea quæ ad spiritualem vitam pertinent dispensant, quasi dextra pars. . . . Duæ quippe vitæ sunt, una terrena, alia cœlestis. Una qua corpus vivit ex anima, alia qua anima vivit ex Deo. Vita terrena bonis terrenis alitur, spiritualis spiritualibus. Ut autem in utraque vita justitia ferveat et utilitas perveniat, primum utrinque distributi sunt, qui utriusque bona secundum necessitatem, vel rationem, studio ac labore acquirant, deinde alii qui ea potestate officii commissi, secundum æquitatem dispensent. Propterea in utroque populo, secundum utramque vitam distributo, potestates sunt constitutæ secularis et spiritualis, in utraque diversi sunt gradus et ordines. Terrena potestas caput habet regem, spiritualis habet summum pontificem.

32. Quantum autem vita spiritualis dignior est, quam terrena, et spiritus quam corpus, tantum spiritualis potestas terrenam honore ac dignitate præcedit. Nam spiritualis terrenam et instituere habet ut sit, et judicare si bona non fuerit. Ipsa vero a Deo primum instituta est, et cum deviat a solo Deo judicari habet et potest, sicut scriptum est, 'spiritualis diiudicat omnia,' &c. Nam et in veteri Testamento, primum a Deo sacerdotium institutum est, postea vero per sacerdotium, jubente Deo, regalis potestas ordinata, unde et adhuc in ecclesia Dei sacerdotalis dignitas regalem potestatem sacrat. Et apostolus, 'Qui benedicat major est.'"

We must, however, observe that in another place Vincent cites a passage from a work which he calls 'Summa Juris,' which says very plainly that while a constitution of the prince has no authority in ecclesiastical matters, in secular matters and in the secular court it is valid against any canon, unless it is contrary to the "Law and the Gospel." In the ecclesiastical court the canons are valid against any secular law.[1]

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[1] Decretals, i. 33. Cf. vol. ii. p. 215.

[2] Decretals, ii. 1, 13. Cf. vol. ii. p. 220.

[3] Vincent, 'Speculum,' ii. 9, 55. (Ex 'Summa de Casibus'): "Ex præmisso inter alia collige notabiliter quod judex, vel potestas secularis, non solum propter heresim suam, sed etiam propter negligentiam circa heresim extirpandam, potest non solum excommunicari ab ecclesia, sed etiam deponi. Et extende hanc pœnam, et ecclesiæ potestatem, quandocunque princeps aliquis secularis fuerit inutilis, dissolutus et negligens circa regimen, et justitiam observandam. Unde Zacharias Papa deposuit Ludovicum Regem Francorum, predecessorem Pipini, patris Caroli, et Innocentius Ottonem Imperatorem. Et est ratio quia omnis Christianus ratione peccati efficitur de foro ecclesiæ. Unde dominus ad Prophetam: 'Ecce, constitui te super gentes et reges.' Potest etiam ecclesia propter ipsorum judicum negligentiam, de illorum subditis judicare."

[4] See chap. v.

[5] It would be interesting if we could determine the date and authorship of this work.

We have discussed this question about the conflict of laws in some detail in a previous volume.[2] Vincent, in citing this passage, seems at any rate to be aware that it was not admitted by the secular lawyers that the Canon Law of the Church could over-ride the Secular Law of the State.

We cannot indeed say that Vincent's citations enable us to form a definite or confident opinion about his own position, but so far as they go, while they do not represent the judgment of the Canonists whom we have considered in the last chapter, that the temporal as well as the spiritual authority belonged to the Pope in principle, they do set out in large terms the claim to a supreme judicial authority over the secular prince.

In the latter part of the century we come to a writer who, like the Canonists with whom we have dealt, represents in the most dogmatic form the principle that the Pope is supreme in temporal as well as in spiritual matters. This is the author of the greater part of the 'De Regimine Principum' of which the first book and part of the second were written by St Thomas Aquinas, and he is now generally identified with Ptolemy of Lucca.[3]

Before, however, we consider his treatment of the temporal authority of the Pope, it is important to observe that the author, as we have pointed out in an earlier chapter, is clear and even dogmatic in asserting that all lordship comes from God as from the first ruler.[1] He argues that this is evident, for the nature of the end of the State is to direct the life of the citizen to virtue and to eternal felicity—that is, the vision of God.[2] Ptolemy then, following St Augustine in the 'De Civitate Dei,' contends that it was because the Romans above all other rulers pursued good ends, that they merited the empire; it was their love of their country, their zeal for justice, and their "civilis benevolentia" which deserved this.[3] He admits, indeed, that there are other reasons on account of which God permits lordship; slavery was caused by sin, and God uses evil rulers as a punishment for the sins of the people[4]; but the lordship which is that of counsel and of direction is natural.[5] Whatever, then, was

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[1] Id. id., ii. 7, 33. He quotes Gratian, Decretum, D. 10, as saying: "Constitutiones vero principum ecclesiasticis constitutionibus non præminent sed ecclesiastibus legibus postponendæ sunt," but he goes on to cite a work which he calls 'Summa Juris': "Nota quod constitutio a principe lata, super ecclesiastico negotio non valet. . . . Si vero canoni contradicit, tunc etiam in secularibus et in foro seculari valet, nisi legi vel evangelio contraria fuerit, tunc enim non valet, ut sunt leges de usuris loquentes et de divortiis. In foro autem ecclesiastico canon, illi legi contradicens observari debet, et secundum illum judicari, sicut est ille de præscriptione 50 annorum." "Super seculari vero negotio lata, si non contradicat canoni, valet, et ipsam ecclesia tamque suam approbat et tenet, ac per ea negotia decidit, ubi canon nil statuit. Quæ si et inmuteretur a principe ipsam quoque immutatam habere debet ecclesia, nisi per canonem specialiter fuerit confirmata."

[2] Cf. vol. ii., pp. 77-80 and 227-233.

[3] For a full discussion of the question how much of this work is by St Thomas Aquinas, and of the reasons why the authorship of the rest of the work is attributed to Ptolemy of Lucca, we would refer the reader to Grabmann, 'Die Echten Schriften des Hl. Thomas von Aquino.'

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[1] St Thomas Aquinas (Ptolemy of Lucca), 'De Regimine Principum,' iii. 1: "Inde manifeste apparet a Deo omne provenire dominium sicut a primo dominante."

[2] Id. id., iii. 3: "Concluditur ergo ex hoc, quod quælibet res quanto ordinatur ad excellentiorem finem, tanto plus participat de actione divina. Hujusmodi autem est regnum cujuscunque communitatis, seu collegii, sive politiæ, sive regalis, sive cujuscunque conditionis: quia cum intendat nobilissimum finem, ut Philosophus tangit in Ethicis et in I. Politicorum, in ipso divina præintelligitur actio, et suæ virtuti dominorum subjicitur regimen. . . .

Amplius, in regimine legislator semper debet intendere ut cives dirigantur ad vivendum secundum virtutem, immo hic est finis legislatoris, ut Philosophus dicit in 2 Ethic. . . .

Finis autem ad quem principaliter Rex intendere debet, in se ipso et in subditis, est æterna beatitudo, quæ in visione Dei consistit. Et quia ista visio est perfectissimum bonum, maxime debet movere Regem, et quemcunque dominum, ut hunc finem subditi consequantur: quia tunc optime regit, si talis in ipso sit finis intentus."

[3] Id. id., iii. 4: "Et quia inter omnes reges, et principes mundi, Romani ad predicta magis fuerunt solliciti, Deus illis inspiravit ad bene regendum, unde et digne meruerunt imperium, ut probat Augustinus in Lib. De Civ. Dei, diversis causis et rationibus quas ad præsens perstringendo ad tres reducere possumus, aliis ut tradatur compendiosius resecatis, quarum intuitu meruerunt dominium, una sumitur ex amore patriæ: alia vero ex zelo justitiæ: tertia autem ex zelo civilis benevolentiæ."

[4] Id. id., iii. 7 and 8.

[5] Id. id., iii. 9: "Sed utrum dominium hominis super hominem sit naturale, vel a Deo permissum, vel provisum, ex jam dictis veritas haberi potest. Quia si loquamur de dominio per modum servilis subjectionis, introductum est propter peccatum, ut dictum est supra. Sed si loquamur de dominio prout importat officium consulendi et dirigendi, isto modo quasi naturale potest dici, quia etiam in statu innocentiæ fuisset."

Ptolemy's judgment on the relation of the temporal and spiritual powers, it is evident that he conceived of the political order as having its origin in God and nature, and that there is no trace in his work of the supposed Hildebrandine tradition that it was a thing evil in its nature.

When we now turn to the question of the relation of the temporal and spiritual powers, we find that Ptolemy sets out and carefully develops the contention that since the coming of Christ temporal power properly belonged to Peter and his successors, for they were the representatives of Christ, to whom all authority belonged.

All power, he says, belonged to Christ, and he conferred this upon his vicar—that is, Peter—when he said "Thou art Peter," for this signified the lordship of Peter and his successors over all the faithful, and the Roman Pontiff may therefore be called both priest and king.[1] After discussing the significance of the first three clauses of the saying of Christ to Peter, he interprets the words "Whatsoever thou shalt bind on earth shall be bound in Heaven" as expressing the fulness of lordship (dominii plenitudo) which Christ conferred upon Peter. For as all movement and "sensus" in the body comes from the head, so in the mystical body of Christ, it comes from the supreme Pontiff who is its head; and this applies to the temporal power as well as the spiritual, for the relation of the temporal to the spiritual is like that of the body to the soul; the body has its being, its virtues, and its operation through the soul, and thus the temporal jurisdiction has these through the spiritual jurisdiction of Peter and his successors. This, he contends, can be proved by the actions of the emperor and popes. Constantine surrendered the empire to Pope Silvester, Pope Hadrian established Charles the Great as emperor, Pope Leo did the same by Otto I. Again, Pope Zacharias deposed the King of the Franks, Innocent III. took the empire from Otto IV., and Pope Honorius from Frederick II. All this they did for just causes as the shepherds of the flock, otherwise they would not have been legitimate lords but merely tyrants. When therefore the popes act thus for the good of the whole flock, their authority is supreme over all other dominion. Ptolemy confirms this by his interpretation of the dream of Nebuchadnezzar, for after the kingdom of the Assyrians, the Persians, the Greeks, and the Romans, God, said the prophet, will establish an eternal kingdom above all others—that is, the kingdom of Christ and of the Roman Church, which holds his place.[1]

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[1] Id. id., iii. 10: "Cum enim eidem (Christo) secundum suam humanitatem omnis sit collata potestas, ut patet in Mat. xvi. 18, dictam potestatem suo communicavit vicario cum dixit 'Ego dico tibi, quia tu es Petrus,' &c. Ubi quatuor ponentur clausulæ, omnes significativæ dominii Petri, suorumque successorum super omnes fideles, et propter quas merito summus Pontifex Romanus episcopus dici potest Rex et Sacerdos."

Ptolemy's position is plain and unambiguous. All temporal as well as spiritual power belongs to the Pope as the representative of Peter and of Christ. His interpretation of the Donation of Constantine is equally interesting and significant, for he treats it not as the source of the temporal power of the Pope, but as merely a recognition of what was always there; and it is evident that this is not merely incidental, but rather that it is an intrinsic part of his whole conception. Christ, he says, was indeed the true lord and monarch of the world, and Augustus was his representative, although he did not know this.[1] Ptolemy discusses the reasons why Christ did not at once assume that universal authority in temporal as well as spiritual matters which properly belonged to him, and contends that there were two reasons for this: the first, that he might teach all princes humility; the second, that he might show men the difference between his lordship and that of others.[2] Christ therefore permitted the prince of the world to rule, both in his lifetime and after his death, until the kingdom should be complete and ordered in his faithful subjects, and only then at the fitting time did he cause Constantine to yield the dominion to the vicar of Christ—that is, to Pope Sylvester, to whom indeed of right it already belonged.[3]

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[1] Id. id., iii. 10: "Sed dominii plenitudo ostenditur cum ultimo dicitur: 'Et quodcunque ligaveris super terram erit legatum et in cœlis,' &c. Cum enim summus pontifex sit caput in corpore mystico omnium fidelium Christi et a capite sit omnis motus et sensus in corpore vero; sic erit in proposito. . . . Quod si dicatur ad solam referri spiritualem potestatem, hoc esse non potest, quia corporale et temporale ex spirituali et perpetuo dependet, sicut corporis operatio ex virtute animæ. Sicut ergo corpus per animam habet esse, virtutem, et operationem . . . ita et temporalis jurisdictio principum per spiritualem Petri et successorum ejus. Cujus quidem argumentum assumi potest per ea quæ invenimus in actis et gestis summorum pontificum et imperatorum, quia temporali jurisdictioni cesserunt. Primo quidem de Constantino apparet, qui Silvestro in imperio cessit. Item de Carolo Magno, quem Papa Adrianus Imperatorem constituit. Idem de Ottone I., qui per Leonem creatus est et Imperator est constitutus, ut historiæ referunt. Sed ex depositione principum auctoritate apostolica facta satis apparet ipsorum potestas.

Primo enim invenimus de Zacharia hanc potestatem exercuisse super regem Francorum, quia ipsum a regno deposuit, et omnes barones a juramento fidelitatis absolvit. Item de Innocentio III. qui Ottoni quarto imperium abstulit: sed et Federico secundo hoc idem accidit per Honorium Innocentii immediatem successorem. Quamvis in omnibus istis summi pontifices non extenderunt manum, nisi ratione delicti, quia ad hoc ordinatur eorum potestas, et cujuslibet domini, ut prosint gregi: unde merito pastores vocantur quibus vigilantia incumbit ad subditorum utilitatem. Alias non sunt legitime domini, sed tyranni, ut probat philosophus, et dictum supra: . . . Hoc ergo supposito, quod pro utilitate gregis agatur, sicut Christus intendit, omne supergreditur dominium, ut ex dictis apparet: quod ex visione Nabuchodonosor satis est manifestum de statua. . . . Sed post hæc 'suscitabit,' ait Propheta, 'dominus Deus cœli, regnum quod in eternum non dissipabitur et regnum ejus populo alteri non tradetur, comminuetque universa regna, et ipsum stabit in æternum': quod totum ad Christum referimus: sed vice ejus ad Romanam ecclesiam, si ad pascendum gregem ejus intendat."

The emperors who succeeded Constantine, after the death of Julian, were obedient to the Roman Church,[1] but finally, because the Emperor of Constantinople did not defend the Roman Church against the Lombards, the Pope called in the Frank to protect it and transferred the empire from the Greeks to the Germans, and thus showed that the authority of the emperor depends upon the judgment of the Pope.[2] He illustrates this further by a discussion of the history of the succession to the empire. With Charles the Great the empire became hereditary, and this lasted to the seventh generation. Then the Roman Church was harassed by the wicked Romans, and summoned Otto the Duke of the Saxons to its aid, and he was created emperor by Pope Leo. The empire again was hereditary in his family until Otto III.[3] Then Gregory V. created the system and method of election, and this will continue as long as the Roman Church, which has the supreme rank in authority, shall judge that it is useful to the Christian people.[4]

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[1] Id. id., iii. 13: "Quia ille natus erat qui verus erat mundi Dominus et monarcha, cujus vices gerebat Augustus licet non intelligens, sed nutu Dei, sicut Caiphas prophetavit."

Cf. id. id., iii. 14: "Sed tunc oritur questio de isto domini principatu, quando incepit, quia constat multos imperasse, ipse vero abjectam vitam elegit. . . . Ad hanc autem questionem est responsio quia principatus Christi incepit statim in ipsa sui nativitate temporali."

[2] Id. id., 14, 15.

[3] Id. id., iii. 16: "Et hinc est quod rex noster Christus principes seculi permisit dominari, et eo vivente et eo moriente, ad tempus, quousque videlicet suum regnum esset perfectum et ordinatum in suis fidelibus, operationibus virtuosis, et eorum sanguine laureatum. . . . Opportuno igitur tempore, ut manifestaretur mundo regnum Christi compositum, virtus principis nostri Jesu Christi principem mundi sollicitavit, Constantinum videlicet, percutiens eum lepra ac ipsum curans supra humanam virtutem. Qua probata, in dominio cessit vicario Christi, beato videlicet Silvestro, cui de jure debebatur ex causis, et rationibus superius assignatis: in qua quidem cessione spirituali Christi regno adjunctum est temporale, spirituali manente in suo vigore: quia illud per se quæri debet a Christi fidelibus, istud vero secundario tamquam administrans primo, aliter autem contra intentionem sit Christi."

The principle which is thus set out by Ptolemy of Lucca that all temporal as well as spiritual power belongs to the Pope, as the representative of Christ, is not in its essence different from that of Innocent IV. and the Canonists with whose work we dealt in the last chapter, but it is stated in even more explicit and dogmatic terms. We shall see in a later chapter that the position of Ptolemy is much the same as that of Henry of Cremona and others who represented the extreme papalist view in the conflict between Boniface VIII. and Philip the Fair.

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[1] Id. id., iii. 17.

[2] Id. id., iii. 18: "Tunc igitur gravata Ecclesia a Longobardis, et Constantinopolis imperio auxilium non ferente, quia forte non poterat, ejus potentia diminuta, advocavit Romanus pontifex ad sui defensionem contra predictos barbaros regem Francorum. Primo quidem Pipinum Stephanus Papa, et successor Zacharias contra Aistulphum regem Longobardorum; deinde Adrianus et Leo Carolum Magnum contra Desiderium Aistulphi filium; quo extirpato, et devinclo cum sua gente, propter tantum beneficium Adrianus concilio celebrato Romæ centum quinquaginta quinque episcoporum, et venerabilium abbatum, imperium in personam magnifici principis Caroli a Graecis transtulit in Germanos; in quo facto satis ostenditur qualiter potestas imperii ex judicio Papæ dependit. Quamdiu enim Constantinopolis principes Romanam ecclesiam defenderunt ut fecit Justinianus. . . . ecclesia dictos principes fovit. Postquam vero defecerunt, ut tempore Michaelis contemporanei Caroli, de alio principe ad sui protectionem providit."

[3] Id. id., 19.

[4] Id. id., iii. 19: "Et ex tunc, ut historiæ tradunt, per Gregorium quintum, genere similiter Theutonicum, provisa est electio, ut videlicet per septem principes Alammaniæ fiat, quæ usque ad ista tempora perseverat, quod est spatium ducentorum septuaginta annorum, vel circa: et tantum durabit quantum Romana Ecclesia, quæ supremum gradum in principatu tenet, Christi fidelibus expediens judicaverit. In quo casu, ut ex verbis Domini supra inductis est manifestum, videlicet pro bono statu universalis ecclesiæ, videtur vicarius Christi habere plenitudinem potestatis, cui competit dicta provisio ex triplici genere."

We must now inquire what was the attitude of St Thomas Aquinas to these conceptions. It has sometimes been said, or at least suggested, that in substance at least he agreed with them; that is what we must consider.

We have already pointed out that St Thomas was clear that the authority of the State was derived from God, and that the function of the temporal order was to lead men to a life of virtue and to that heavenly blessedness which is the true end of life.[1] St Thomas, that is, recognised the lofty character and the high purpose of the temporal power, but he was also clear that there was a greater and more excellent authority in the world than this. There is an important passage in his own part of the 'De Regimine Principum' in which he sets this out. The final end of life of the multitude gathered together in society is not the life of virtue, but is to attain through the life of virtue to the fruition of the divine, and to this end man needs a rule which is not only human but also divine. This belongs to Christ, who is not only man but God, king, and priest, and from Him is derived the royal priesthood, and all the faithful, insomuch as they are His members, are both kings and priests. The ministry (ministerium) of this kingdom, in order that spiritual things may be distinguished from earthly, belongs not to the earthly kings but to the priests, and above all to the chief priest, the successor of Peter, the vicar of Christ, the Roman Pontiff, to whom all kings of the Christian people ought to be subject, as to the Lord Jesus Christ Himself, for those who have the charge of the lower ends must be subject to him who has the charge of the final end, and must be directed by his authority. It was suitable that the priests of the heathen, and even of the Old Testament, should have been subject to the kings, for the purpose and promises of these systems of religion were concerned with temporal prosperity, but the priesthood of the new law is more lofty, for it leads men to a heavenly good, and therefore in the law of Christ kings must be subject to priests.[1]

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[1] Cf. p. 33.

With this careful statement we must compare a very important passage in the 'Summa Theologica.' St Thomas, in discussing the question of usurped jurisdictions, maintains that the spiritual power does not commit an act of usurpation when it interferes in these temporal matters in which the secular power is subject to it, or in those which are left to it by the secular power.[2]

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[1] St Thomas Aquinas, 'De Regimine Principum,' i. 14: "Non est ergo ultimus finis multitudinis congregatæ vivere secundum virtutem, sed per virtuosam vitam pervenire ad fruitionem divinam. . . . Sed quia finem fruitionis divinæ non consequitur homo per virtutem humanam, sed virtute divina, juxta illud apostoli Roman. vi. 'Gratia Dei vita eterna': perducere ad illam finem non humani erit, sed divini regiminis. Ad illum igitur regem hujusmodi regimen pertinet, qui non est solum homo, sed etiam Deus, scilicet ad dominum nostrum Jesum Christum, qui homines filios Dei faciens in cœlestem gloriam introduxit. Hoc igitur est regimen ei traditum quod non corrumpetur: propter quod non solum sacerdos, sed rex in scripturis sacris nominatur, dicente Hierem. xxiii. 'Regnabit rex et sapiens erit.' Unde ab eo regale sacerdotium derivatur. Et quod est amplius, omnes Christi fideles in quantum sunt membra ejus, reges et sacerdotes dicuntur. Hujus ergo regni ministerium, ut a terrenis essent spiritualia distincta, non terrenis regibus, sed sacerdotibus est commissum, et precipue summo sacerdoti successori Petri, Christi Vicario, Romano pontifici, cui omnes reges populi Christiani oportet esse subditos, sicut ipsi Domino Jesu Christo. Sic enim ei ad quem finis ultimi cura pertinet, subdi debent illi, ad quos pertinet cura antecedentium finium, et ejus imperio dirigi. Quia igitur sacerdotium gentilium, et totus divinorum cultus erat propter temporalia bona conquirenda, quæ omnia ordinantur ad multitudinis bonum commune, cujus regi cura incumbit, convenienter sacerdotes gentilium regibus subdebantur. Sed et quia in veteri lege promittebantur bona terrena, non a dæmonibus, sed a Deo vero religioso populo exhibenda, inde et in lege veteri sacerdotes regibus leguntur fuisse subjecti. Sed in nova lege est sacerdotium altius, per quod homines traducuntur ad bona cœlestia: unde et in lege Christi reges debent sacerdotibus esse subjecti."

[2] Id., 'Summa Theologica,' 2, 2, 60, 6, 3: "Potestas spiritualis distinguitur a temporali: sed quandoque prelati habentes spiritualem potestatem intromittunt se de his, quæ pertinent ad secularem potestatem; ergo usurpatum judicium non est illicitum. . . . Ad tertium dicendum, quod potestas

These passages certainly do not suggest that St Thomas conceived of the Pope as holding the temporal power; in the first he seems clearly to mean that it is for the head of the spiritual power to guide and direct the temporal towards the final end of life, and to exercise authority over it with regard to that final end; in the second he seems carefully to limit and circumscribe its temporal authority.

St Thomas is indeed clear that the subjects of a secular ruler, who has been excommunicated on the ground of apostasy, are absolved from their oath of allegiance, and that the Church has power to excommunicate and thus to depose such a ruler. He discusses this under the terms of the question whether the prince, who apostatises from his faith, loses his authority over his subjects. After stating various arguments against this, he quotes Gregory VII. (as from Gratian, 'Decretum,' Causa 15, 6, 4) as declaring that he absolved from their oath of fealty all those who owed allegiance to an excommunicated person. He then carefully states his own judgment that unbelief does not in itself affect the validity of political authority, for, as we have seen in an earlier chapter, St Thomas fully recognises its validity among non-Christian peoples.[1] The Church has authority to punish those who have been believers and become infidels, as it may also sometimes do for other faults; and thus, as soon as a ruler has been excommunicated on the ground of apostasy, his subjects are *ipso facto* released from his rule and from their oaths of allegiance.[2] St Thomas, that is, seems clearly

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secularis subditur spirituali, sicut corpus animæ; ed ideo non est usurpatum judicium, si spiritualis prelatus se intromittat de temporalibus quantum ad ea, in qubus subditur ei secularis potestas, vel quæ ei a seculari potestate relinquuntur."

[1] Cf. p. 34.

[2] Id. id., 2, 2, 12, 2. "Sed contra est quod Gregorius VII. dicit (Gratian, 'Decretum,' C. 15, 6, 4). 'Nos sanctorum predecessorum statuta tenentes eos, qui excommunicatis fidelitate, aut juramenti sacramento sunt constricti, apostolica auctoritate a sacramento absolvimus; et ne eis fidelitatem observent, omnibus modis prohibemus, quousque ad satisfactionem veniant.' Sed apostatæ a fide sunt excommunicati sicut et heretici, ut dicit Decretalis extra, de hereticis Cap. 'ad abolendum' (Decretals, v. 7, 9); ergo principibus apostantibus a fide non est obediendum.

Respondeo dicendum, quod sicut supra dictum est, infidelitas, secundum seipsam, non repugnat dominio; eo quod dominium introductum est de to maintain the Hildebrandine principle that, at least for certain offences, the Church has the right to excommunicate and depose princes.

This, however, is not the same thing as the doctrine that the spiritual authority, in principle, also holds all temporal authority. There are only, as far as we have seen, two passages in the works of St Thomas which seem to have this meaning. The first is contained in one of his early works, the Commentary on the Sentences of Peter Lombard, and this is a very curious and interesting passage, both for what it denies and what it asserts. When, St Thomas says, an inferior and a superior authority are both derived from a supreme authority, neither is subject to the other, except in respect of those things in which it has been subjected to the other by the supreme power. This is the case with the spiritual and secular authorities, which are both derived from the divine authority. In those things which pertain to the salvation of the soul, the secular power has been subjected by God to the spiritual and must obey it. The spiritual power must, on the other hand, obey the secular in matters which belong to the "bonum civile." St Thomas is denying any general authority of the ecclesiastical over the political authority, he is clearly enforcing the traditional Gelasian principle of the distinctive character of the two powers.

He proceeds, however, to make one exception—that is, in the case of the Pope. This (*i.e.*, the foregoing statement), he says, is true, unless perchance the secular is combined with

jure gentium, quod est jus humanum: distinctio autem fidelium et infidelium est secundum jus divinum, per quod non tollitur jus humanum; sed aliquis per infidelitatem peccans potest sententialiter jus dominii amittere, sicut etiam quandoque propter alias culpas. Ad ecclesiam autem non pertinet punire infidelitatem in illis qui nunquam fidem susceperunt, secundum illum Apost. i. ad Cor. v. 'Quid mihi de his, qui foris sunt, judicare.' Sed infidelitatem illorum qui fidem susceperunt, potest sententialiter punire: et convenienter in hoc puniuntur, quod subditis fidelibus dominari non possint: hoc enim vergere posset in magnam fidei corruptionem; quia, ut dictum est, 'homo apostata pravo corde machinatur malum, et iurgia seminat,' intendeus homines separare a fide; et ideo quam cito aliquis per sententiam denuntiatur excommunicatus propter apostasiam a fide, ipso facto ejus subditi sunt absoluti a dominio ejus, et juramento fidelitatis quo ei tenebantur."

the spiritual authority, as in the case of the Pope, who holds the highest place in both powers (qui utriusque potestatis apicem tenet, scilicet, spiritualis et sæcularis), by the ordinance of him who is priest and king for ever according to the order of Melchizedek.[1]

The other passage is contained in the work entitled 'Questiones Quodlibetales,' and in it he speaks of kings as vassals of the Church.[2]

The first of these passages is very clear in its statement that the Pope holds the supreme authority in temporal as well as spiritual matters, but it is curious in its emphatic assertion that the Church as a whole has no such authority.

It is no doubt true that the Canonists and other writers, whose position we have considered in this chapter and the previous one, deal in the main with the special jurisdiction of Peter and his successors, but Hostiensis especially does not confine himself to this, but rather develops the intrinsic superiority of the "sacerdotium" over the "imperium," and the derivation of the authority of the secular from the spiritual,[1] as had been done before him by Gregory VII., who had associated the bishops present at the Council of Rome in 1080 with himself in the deposition of Henry IV.,[2] and by Honorius of Augsburg in the 'Summa Gloria.'[3] The position represented in St Thomas' work on the 'Sentences' is not unintelligible, but it is curiously paradoxical, and it is certainly not suggested by, hardly indeed reconcilable with, the terms of the important passage from the 'De Regimine Principum' which we have just cited.[4] It is possible that the explanation may lie in the fact that the work on the 'Sentences' was written early in St Thomas' career, and that in his later years his judgment had changed, as we have already seen that it did on the question of the propriety of tyrannicide.[5]

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[1] Id., Commentary on the Sentences of Peter Lombard, II. D. 44, Q. 2, Art. 3, 'Expositio Textus': "Respondeo dicendum, quod potestas superior, et inferior dupliciter possunt se habere. Aut ita quod inferior potestas ex toto oriatur a superiori; et tunc tota virtus inferioris fundatur supra virtutem superioris: et tunc simpliciter et in omnibus est magis obediendum potestati superiori, quam inferiori; . . . et sic se habet potestas Dei ad omnem potestatem creatam; sic etiam se habet potestas Imperatoris ad potestatem proconsulis; sic etiam se habet potestas Papæ ad omnem spiritualem potestatem in Ecclesia: quia ab ipso Papa gradus dignitatum diversi in Ecclesia et disponuntur, et ordinuntur: unde eius potestas est quoddem Ecclesiae fundamentum, ut patet Matth. xvi. . . . Potest iterum potestas superior, et inferior ita se habere, quod ambae oriantur ex una quadam suprema potestate, quæ unam alteri subdit secundum quod vult; et tunc una non est superior altera, nisi in his quibus supponitur alii a suprema potestate; et in illis tantum est magis obediendum superiori, quam inferiori: et hoc modo se habent potestates et Episcopi et Archiepiscopi descendentes a Papæ potestate. . . .

Ad quartum dicendum, quod potestas spiritualis, et sæcularis, utraque deducitur a potestate divina: et ideo intantum sæcularis potestas est sub spirituali, inquantum est ei a Deo supposita, scilicet in his quæ ad salutem animæ pertinent: et ideo in his magis est obediendum potestati spirituali quam seculari. In his autem quæ ad bonum civile pertinent, est magis obediendum potestati sæculari quam spirituali, secundum illud Matth. xxii. 21. 'Reddite quæ sunt Cæsaris Cæsari.'

Nisi forte potestati spirituali etiam sæcularis potestas coniungatur, sicut in Papa, qui utriusque potestatis apicem tenet, scilicet, spiritualis et sæcularis."

[2] Id., 'Quæstiones Quodlibetales,' xii., Art. 19: "Aliud vero tempus est nunc, quo Reges intelligunt, et enuditi serviunt Domino Jesu Christo in timore ete, et ideo in isto tempore Reges vasalli sunt Ecclesiæ. Et ideo est alius status Ecclesiæ nunc, et tunc, non tamen est alia Ecclesia."

The statement that kings are vassals of the Church is wholly isolated, and there is nothing in his general treatment of the relation of the spiritual and temporal powers which confirms it, rather, much which seems incompatible with it.[6]

What conclusion then are we to form as to the judgment of St Thomas Aquinas with regard to the temporal authority of the Pope? It seems to us that he clearly and fully recognised the Hildebrandine claim that the Pope had authority to excommunicate and to depose the secular ruler, at least when he departed from the faith, but that, while in the one passage which we have just considered, he claims for the Pope the supreme power both in temporal and spiritual matters, his treatment of the subject both in the 'Summa Theologica' and in the 'De Regimine Principum' suggests that his normal and mature judgment was that the Pope had an indirect rather than a direct authority in temporal matters. It was the spiritual authority of the Pope which should direct men to their final end—that is, the knowledge and enjoyment of God; the temporal power was subject to him in the sense that it should obey the Pope in all that concerned the ordering of human life to this end. We are therefore disposed to conclude that the mature judgment of St Thomas coincided neither with that of the Canonists whose position we considered in the last chapter, nor with that of Ptolemy of Lucca, and that to claim the authority of St Thomas for these opinions is a serious error.

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[1] Cf. p. 325.

[2] Cf. vol. iv. p. 200.

[3] Cf. vol. iv. p. 288.

[4] Cf. p. 348.

[5] Cf. pp. 92-96. It is also worth observing that the text of the work on the 'Sentences' is very doubtful.

[6] It may only mean that some kings were vassals of the Church.

CHAPTER VII.

THE THEORY OF THE TEMPORAL POWER OF THE PAPACY IN THE JURISTS AND THE CONSTITUTIONAL DOCUMENTS OF THE THIRTEENTH CENTURY.

We have endeavoured in the last two chapters to set out the development in the latter part of the thirteenth century of the theory that the popes held, in principle, all temporal as well as spiritual authority, that in the last resort all secular princes were under their authority in secular as well as ecclesiastical matters. We have endeavoured to point out also, that while this theory was related to the Hildebrandine principles and policy of the eleventh century, it was substantially a new theory, and that the author of it as a developed conception was Innocent IV., while he, no doubt, founded it upon the policy and phrases, often incidental, of Innocent III. We venture to think that it is important to recognise, therefore, that in this extreme form the theory of the political authority of the papacy was not the common doctrine of the Middle Ages, but belonged in reality only to a certain period. We have also suggested that it is at least very doubtful whether St Thomas Aquinas accepted it.

We have now to consider how far it can be said that this theory was accepted by the general judgment of the time, and we begin by examining the position of the civilians and lawyers.

The most important Civilian of the middle of the thirteenth century was Odofridus. In the introduction to his 'Commentary on the Digest' he says roundly that the emperor ought to possess authority over all men, and that no one has authority over him in temporal matters.[1] In his work on the 'Code,' however, he discusses the relations of the Pope and the emperor more precisely. If, he says, the question were raised which is the greater, the Pope or the emperor, it might be said that the emperor has a greater dignity, but, on the other hand, it might be contended that the Pope is greater than the emperor, for the confirmation of the emperor belongs to him, and the emperor calls him father, while he addresses the emperor as son. Odofridus himself would put the matter in another way. There are two jurisdictions, the spiritual and the temporal, the Pope is supreme in spiritual matters, but the emperor in temporal; the Pope is therefore greater in the one, the emperor in the other. It is true, however, that he admits that the Pope intervenes in any matter when there is a question of sin, and he does this also when the empire is vacant.[2] Odofridus seems clearly to know, and does not contradict the claim of Innocent III. as recorded in the Decretals, that he had jurisdiction in all cases when sin could be alleged, and when the empire was vacant, and that the Pope had the right to confirm the emperor; but his general position is quite clear and emphatic, the temporal and the spiritual jurisdictions are distinct, and the emperor is supreme and greater than the Pope in temporal matters.

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[1] Odofridus, 'Commentary on Digest,' Introduction, i. 1: "(Imperator) quia princeps Romanorum vocatur Imperator; quia ipse est qui omnibus subsistentibus sub sole debet posse imperare: et nemo sibi imperare potest quantum ad temporalia."

[2] Id., 'Commentary on the Code,' i. 1 (fol. 6, 3): "Ex quo videtur si quæratur, quis sit major, an Papa vel Imperator, quod major sit Imperator quam Papa, quia semper digniora sunt proferenda. . . . Sed econtra videtur quod Papa sit major quam Imperator, cum confirmatio Imperatoris pertineat ad eum. Item videtur quod Papa sit major quam Imperator, quia vocat eum Patrem, et Papa vocat eum filium. Sed nos in questione ista ita dicemus. Due sunt jurisdictiones, spiritualis et temporalis, in spiritualibus præest Papa, in temporalibus Imperator . . . unde in spiritualibus est major Papa . . . in temporalibus Imperator, quia non habet cognoscere dominus Papa inter me et Titium de rei vē, sed in spiritualibus sic, ut de matrimonio. Verum tamen dominus Papa ratione peccati intromittit se de omnibus ut ex de judi . . . c. . . . novit ille, q. nihil (Decretals, ii. 1, 13). Quod capitulum loquitur de Rege Angliæ et Franciæ. Item vacante imperio, et ad hoc fecit extra de foro co. c. licet (Decretals, ii. 2, 10) et hoc credo etiam quod contingat ratione peccati."

The same position is represented by a Civilian contemporary with Odofridus, Martin of Fano. He maintains that the "sacerdotium" and the "imperium" have the same divine origin, but their actions and duties and jurisdiction and dignities are divided and distinct; the Pope is supreme lord in spiritual and divine things, and the emperor in secular and human ones; and he concludes by citing from Gratian the words of Pope Gelasius on the separation of the two authorities by Christ Himself.[1]

Another Civilian, John of Viterbo, writing apparently not earlier than the pontificate of Urban IV. (1261-64), sets out a somewhat detailed discussion of the rationale and character of the two authorities. It is natural, he says, that the human race should be ruled by two systems of law and by two authorities, for men are composed of spirit and body and must be controlled by different means; but it is God who rules men by both authorities, the spiritual and the temporal. The greatest gifts of God to men are the "sacerdotium" and the "imperium," the one ministering in divine things, the other in human, but both proceeding from the same source. These represent the two swords, different from each other in their functions and held by separate ministers. The "imperium" was established by God Himself, and to the emperor is entrusted "rerum summa"; the imperial constitution has sanctioned the principle that the Pope of Rome should be the first of all priests. All power is ordained by God, and the electors derive their power from God. Thus the chief powers, that is the Pope and the emperor, are bound to love and honour and help each other in all things, since they both come from the same source, that is, God; but each should be content with his own province, and neither should interfere in the affairs of the other without his permission.[1]

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[1] Martin of Fano, 'De Brachio seu Auxilio implorando per judicem ecclesiasticum a judice seculari,' 18: "Sciendum est igitur quod ab eodem principio processerunt sacerdotium et imperium a divina clementia. Illud quidem domino ministrans, scilicet sacerdotium, hoc autem humanis præsidens, scilicet imperium, ac diligentiam exhibens ex uno eodemque principio, utraque præcedentia humanam vitam exornat: sunt igitur istorum duorum Principum actus divisi et officia discreta, et jurisdictiones atque dignitates eorum distinctæ. Et summus Pontifex præest et est dominus in spiritualibus et divinis, et Imperator præest singularibus (secularibus ?) et humanis, prout supra proxime dicitur, ut probatur 10 dist. c. quoniam idem (Gratian, 'Decretum,' D. 10, 8) et 97 dist. c. cum ad verum (Gratian, 'Decretum,' D. 96, 6)."

The position of John of Viterbo is very clearly expressed. The two authorities are derived from God, and are separate and independent; the two swords are distinct, and each held by the appropriate minister. The two powers should be helpful to each other, but neither should interfere in the affairs of the other.

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[1] Johannes Viterbiensis, 'De Regimine Civitatum,' 127: "Non est mirandum si humanum genus duobus juribus et duabus potestatibus regitur et gubernatur, scilicet divino et civili et communi jure, et maxime genus Christianorum; quoniam hoc constat ex spiritu et carnali corpore. Expediebat enim facta carnis compescere virtute legum, et spiritus gubernari doctrina et virtute divina. . . . Retribuit enim Deus et vindicat non solum tunc, cum Christus dicturus est; 'Venite, benedicti patris mei,' et cum dicet, 'Ite, maledicti, etc,' et cum faciet eos judices, ut supra dictum est; sed etiam per ministros suos se vindicat in hac vita, id est, per ambas potestates, scilicet, spiritualem et temporalem, per quas utrumque jus regitur et redditur humano generi . . . 128. 'Maxima in omnibus hominibus sunt dona Dei, a suprema collata clementia, id est, sacerdotium et imperium, illud quidem divinis ministrans hoc autem humanis præsidens; ex uno eodemque principio utraque procedentia, humanam exornant vitam' (Novels, vi. 1, Præf.). Nec multo differunt ab alterutro sacerdotium et imperium; per hoc autem datur intelligi duos gladios, scilicet spiritualem et temporalem, fuisse sufficientes humano generi juxta verbum Domini. . . . Unde colligitur ex hoc quod duo gladii in mensa domini fuissent appositi, quod, cum sint ad invicem diversi propter diversa official diversos meruerunt habere ministros; ut alter esset qui dignos verbis percutiret gladio, alter qui meritos ferri puniret instrumento. Imperium enim Deus de Cœlo constituit, imperium autem semper est. . . . Imperatoribus vero propter loci dignitatem rerum summa commissa est. Sanctissimum autem (senioris) Romæ Papam primum esse omnium sacerdotum imperialis constitutio sancivit. Patet igitur supra dictis rationibus et constitutionibus utramque potestatem et utrumque gladium a Deo esse. . . . Patet igitur manifeste quod potestas ordinatur a Deo et ordinatores sive electores potestatis a Deo sunt, quoniam ordinatio, ut dictum est ab apostolo, a Deo est. . . . Supradictæ autem duæ principales potestates, scilicet Papa et Imperator, tenentur se ad invicem diligere et juvare et in omnibus honorare et revereri, cum sint, ut dictum est, ab uno eodemque principio et factore, id est Domino Deo; et contentus esse debet quilibet terminis suis: ille scilicet in divinis et spiritualibus et hiis in quibus habet utramque jurisdictionem; iste in temporalibus; nec alter in alterius messem falcem suam mettere debet sine permissu alterius, ut utramque viam digne et juste incedentes, humanum genus et ejus jura ornentur et gubernentur judicio, justitia et equitate."

For the date of this work, cf. c. 22.

With these judgments we may compare the very precise and explicit statement of Andrew of Isernia, the commentator on the Constitutions of the kingdom of Naples. His position is the more significant because he recognises explicitly that the kingdom of Naples was a fief of the Church of Rome. He refers indeed to the transference of the empire by the Pope to the Germans, but he also dogmatically says that the Pope has "nothing temporal" in the empire, except what the emperor may grant to him.[1]

It is clear that as far as the legal writers are concerned, the conception that a general temporal authority belonged to the Pope was emphatically repudiated. They held firmly to the traditional and normal mediæval doctrine, derived from Pope Gelasius, that there were two distinct authorities, each derived from Christ, and each supreme in its own sphere.

We have cited these writers as representing principles which had a general application, though they were referring primarily to the empire. We can now observe that the principle of the independence of the temporal power is specifically asserted with regard to several of the mediæval States.

It is specially interesting to observe the manner in which the subject is treated in the 'Assizes of Jerusalem,' with respect, that is, to a State where we might naturally have expected to find traces of a special recognition of the papal authority; actually we find the very reverse. In one place Jean d'Ibelin sets out the general constitutional principles of the kingdom of Jerusalem, and says that in the kingdom there are two chief lords, one spiritual, the other temporal:

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[1] Andreas de Isernia, 'Peregrina,' i. (fol. 10): "Nam Papa transtulit imperium totum in Germanos a Romanis. . . . In imperio nil temporale habet (Papa) nisi quantum imperator sibi concedit. Sed regnum est feudum ecclesiæ, quæ ab imperio aditur, vacante imperio."

the Patriarch of Jerusalem is the spiritual lord, the King is the temporal lord.[1] It has been suggested that the King of Jerusalem owed some kind of temporal allegiance to the patriarch, and that this is implied in the terms of the oath to the patriarch which he swore at the time of his election; but this is a misconception: the oath which he took is not one of fealty but of help and protection.[2]

In another place Jean d'Ibelin says emphatically that the King of Jerusalem holds his kingdom only of God.[3] In yet another passage we find the authority of the temporal order affirmed with a somewhat singular rigour; for Jean d'Ibelin affirms that the law based on long usage was to be maintained in preference to laws, or decrees, or decretals, that is, in preference to Roman or canon law.[4] The statement is important, for it is clearly inconsistent with the conception that the law of the spiritual power was superior to, or could over-ride the law of, the temporal power within the sphere of the latter.

The same principle of the complete independence of the temporal power is very emphatically asserted in the law-books of Alfonso X. of Castile and Leon. The emperor, he says, is the vicar of God in the empire to do justice in temporal matters, as the Pope does in spiritual; and kings are the vicars of God to maintain justice in the kingdom as the emperor does in the empire.[5] And again, the emperor or king can make laws for the people, and no other power can make them in temporal matters except by his authority.[1] And more explicitly still, in another place, Alfonso asserts that he can make laws better than others who might have a superior, while he, by the grace of God, had no superior in temporal things.[2] This is peculiarly noticeable, for there had been longstanding claims on the part of the papacy to the lordship of Spain.[3] It is clear that Alfonso X. recognised nothing of the kind, and we have not found any traces of the recognition of a political authority of the popes in any of the constitutional and legal documents of Castile or Leon in the twelfth or thirteenth centuries.

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[1] 'Assizes of Jerusalem,' Jean d'Ibelin, 260: "Il y a ou reiaume de Jerusalem deus chiefs seignors, l'un espirituel, e l'autre temporel: le Patriarche de Jerusalem est le seignor espirituel et le rei dou reiaume de Jerusalem le seignor temporel doudit reiaume."

[2] Id. 7.

[3] Id. 6: "Le rei du reiaume de Jerusalem ne tient son reiaume que de Dieu."

[4] Id., iii.: "Car les Assises ne pevent estre en pluisors choses provées, que par le lonc usage, ou por ce que l'on l'a veu faire et user come assise; e ce e maniere de lei, e deit estre et est tenu au reiaume de Jerusalem et en celui de Chipre, miaus que leis ne decrès ne decretalles."

[5] 'Siete Partidas,' 2, 1, 1: "Et otrosi dixieron los sabios que el emperador es vicario de Dios en el imperio para facer justicia en lo temporal, bien asi como lo es el papa en los espiritual."

Id., 2, 1, 5: "Vicarios de Dios son los reyes cada uno en su regno puestos sobre las gentes parra mantenerlas en justicia et en verdad quanto en lo temporal, bien asi como el emperador en su imperio."

With the position of France we shall deal more fully in the next chapter, for the discussion of this belongs naturally to the great conflict between Boniface VIII. and Philip the Fair. We may, however, here notice a few important passages in the legal works of the thirteenth century, which belong to the period before the final conflict broke out.

In the compilation which is called the 'Etablissements de Saint Louis,' it is said that there is no one to whom appeal can be made from the king's court, for the king holds of no one but God and himself.[4] Beaumanoir deals with the question of the "two swords" in terms which certainly seem to imply that he did not recognise any claim on the part of the Church to hold both. There are, he says, two swords by which the people should be governed, the one spiritual, the other temporal; the spiritual should be given to the Church, the temporal to the princes. The spiritual is more "cruel" than the temporal, for it concerns the soul; those who hold it should be careful not to use it without good cause, as in the case of excommunication, which, he suggests, was used too lightly. The temporal sword is that which executes lawful and corporal justice upon the evildoer. When there is occasion, the one sword should help the other.[1] In another place he deals in some detail with this question of the help which the temporal justice should render to the spiritual, and the terms in which he does this are very significant. He enumerates a number of cases which belong to the Church courts, and among them he mentions questions concerning testamentary dispositions; if the executor refuses to obey the commands of the Church, the secular justice is to help the justice of the Church by seizing the property and compelling the executor to carry out the testament. But, he adds, the secular justice does this, not at the command of the justice of the Church, but on a supplication from it, for in no case which concerns temporal justice is the secular court obliged to obey the spiritual court, but only as an act of grace. This grace, however, should not be refused by the one court to the other, when it is asked for "benignement."[2]

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[1] Id., i. 1, 12: "Emperador o rey puede facer leyes sobra las gentes de su senorio, et otro ninguno non ha poder de las facer en lo temporal, fueras ende si las feciese con otorgamiento dellos."

[2] 'Especulo,' i. 1, 13: "Mucho mas las (leyes) podremos nos fazer que por la merced de Dios non avemos mayor sobre nos en el temporal."

[3] Cf. vol. iv. p. 301.

[4] 'Etablissements de St Louis,' i. 83: "Car ils ne troveroient qui los en feïst droit, car li rois ne tient de nului fors de Dieu e de lui."

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[1] Beaumanoir, 'Les Coutumes de Beauvaisis,' c. 46, sect. 147. 4: "Deus espées sont, par lesqueles tous li pueples doit estre gouvernés, espirituelment e temporelment, car l'une des espées doit etre espirituele et l'autre temporele. L'espirituele doit estre baillie a Sainte Eglise e la temporele, as princes de terre . . . et pour ce que l'espee espirituele est plus cruelus que la temporele, pour ce que l'ame i enquiurt, doivent il mout regarder, cil qui l'ont en garde, qu'il n'en fierent sans reson, si comme des escommeniemens qu'il font trop legerement. . . ."

1475: "L'espee temporele si est d'autre atempreure, car par li doit estre fete droite justice sans delai, e venjance prise des maufeteurs corporelment. E quant une espee a mestier de l'autre, eles s'entredoivent aidier, sauf ce que l'espee espirituele ne se doit entremetre de nule justice temporele, dont nus puist perdre ne vie ne membre; mais especiaument l'espée temporele doit tous jours estre apareilliee pour garder e defendre sainte Eglise toutes les fois que mestiers en est."

[2] Id. id., chap. xi. sect. 321: "Et quant il avient que li executeur ne vuelent obéir au commandement de Saint Eglise, ançois se laissent escommenier, en tel cas doit bien aidier la justice laie a la justice de Sainte Eglise, car li executeur doivent estre contraint par la prise de leur biens temporeus, a ce que li testamens soit aemplis si comme il doit. Nepourquant la justice laie ne fet pas ceste contrainte au commandement de la justice de Sainte Eglise, mes a sa supplicacion, car de nule riens qui touche cas de justice temporel la justice laie n'est tenue a obéir au commandement de la justice espirituel, selonc nostre coustume, se n'est par grace. Mes la grace ne doit pas estre refusee de l'une justice à l'autre, quant ele est requise benignement."

It seems to be clear that Beaumanoir held that the two powers were distinct and independent of each other, and that the spiritual power had no authority over the temporal with regard to temporal matters.

The same principles are clearly expressed with regard to England by Bracton, and this is the more significant, for John had accepted the position of a vassal of the Pope. In one place he says that the king ought not to be under any man, but only under God and the law—he is the vicar of God and of Christ.[1] In another place he says, in terms very similar to those of Beaumanoir, that there are spiritual cases in which the secular judge has no authority, but that there are also secular cases which belong to the kings and princes in which the ecclesiastical judge must not interfere, for their laws and jurisdiction are limited and separated. Only, the one should help the other; there is a great difference between the "sacerdotium" and the "regnum."[2]

There is really no evidence that the claim that the papacy, in virtue of its nature, possessed the supreme temporal power would have been accepted by any of these countries; as far as they are concerned, the principles of Innocent IV. and of Ptolemy of Lucca were evidently ignored.

The question of the conception of the relation of the spiritual and temporal powers in the Empire is much more complicated; in the course of the great conflict between Pope and Emperor men were drawn to one side or the other, not merely by general principles, but often by political and personal considerations.

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[1] Bracton, 'De Legibus,' i. 8, 5: "Ipse autem rex non debet esse sub homine, sed sub Deo et sub Lege, quia lex facit regem. . . . Et quod sub lege esse debeat, cum sit Dei vicarius, evidenter apparet ad similitudinem Jesu Christi, cujus vices gerit in terris."

[2] Id. id., iii. 8, 5: "Sunt enim causæ spirituales, in quibus judex secularis non habet cognitionem nec executionem, cum non habeat coertionem. In his enim causis pertinet cognitio ad judices ecclesiasticos qui regunt et defendunt sacerdotium. Sunt autem causæ seculares quorum cognitio pertinet ad reges et principes qui defendunt regnum, et de quibus judices ecclesiastici se intromittere non debent, cum eorum jura sive jurisdictiones limitatæ sunt et separatæ, nisi ita sit quod gladius juvare debet gladium; est enim magna differentia inter sacerdotium et regnum."

We may set out by examining the position of Eike von Repkow, the author of the 'Sachsenspiegel.' He begins with the statement that God established two swords for the protection of Christendom; the Pope has received the spiritual, and the Emperor the earthly. The Emperor is to compel those who resist the Pope to obey, and the Pope is to help the earthly power if it needs this.[1] The author does not seem to have any thought that the two swords both belong to the Pope.

It is true that in a later passage he says that Constantine gave to the Pope secular "gewedde," but he does not explain in what sense this is to be taken: he is careful to add that the secular authority must support the spiritual, and the reason he gives for this is noteworthy. The sentence of excommunication does indeed affect man's soul, but not his body, nor can it affect a man's legal rights (ne krenket niemanne an lantrechte noch an lenrechte), these can only be dealt with by the ban of the king.[2] We may compare with this another passage where he says that while the Pope has authority in dealing with the marriage law, he has no power of making any laws which affect a man's "landrecht" or "lenrecht."[3] Whatever he understood by the grant of

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[1] 'Sachsenspiegel,' i. 1: "Tvei svert lit got in ertrike to bescermene de Kristenheit. Deme pavese is gesat dat geistlike, deme Keiser dat wertlike. Deme pavese is ok gerat, to ridene to bescedene tiet up eneme blanken perde unde de Keiser sul ime den stegerep halden, dur dat de sadel nicht ne winde. Dit is de beteknisse, svat deme pavese widersta, dat he mit geislikeme rechte nicht gedvingen ne mach, dat it de Keiser mit wertlikem rechte deme pavese gehorsam to wesene. So sal ok de geislike gewalt helpen deme wertlikem rechte, of it is bedarf."

[2] Id., iii. 63 (1): "Constantin de koning gaf deme pavese Silvestre weretlik gewedde to'me geistliken, di sestich shillinge mede to dvingene alle jene, di gode nicht beteren ne willen mit deme live, dat man sie dar to dvinge mit deme gude. Alsüs sal wertlik gerichte unde geistlik over en dragen, svat so deme enen widerstat, dat man't mit deme anderen dvinge gehorsam to wesene unde rechtes to plegene. (2) Ban scadet der sele unde ne nimt doch niemanne den lif, noch ne krenket niemanne an lantrechte noch an lenrechte, dar ne volge des koninges achte na."

[3] Id., i. 33: "De sibbe lent in dem seveden erve to nemene, al hebbe de paves georlovet wif to nemene in der veften; wende de paves ne mach nen richt setten dar he unse lantrecht oder lenrecht mede ergere."

Constantine to the Pope, it is clear that he did not understand it as meaning that the Pope possessed secular jurisdiction, or legislative authority in temporal matters. The most important concession he makes to the papal authority in the empire is that a man may not be elected as king if he is excommunicated, and even this he qualifies, for he must have been lawfully excommunicated.[1] We may conclude that Eike von Repkow shows no trace of the view that the Pope possessed the supreme temporal power, or that it was from him that the emperor or king derived his power.

This is well brought out when we compare the 'Sachsenspiegel' with the later composition which we know as the 'Schwabenspiegel.'[2] This work, though founded in part on the 'Sachsenspiegel,' represents quite another position. It also begins with the statement that God, that is, Christ, when he returned to heaven, left two swords in the world, the one for spiritual judgment, the other for secular, but, the compiler proceeds, he left both to Peter, and therefore the Pope entrusts the one to the emperor, while he retains the other in his own hands.[3] This is the position of those who represent the extreme papalist position, for it represents the temporal power as properly belonging to the Pope and as entrusted by him to the secular power. It is true, on the other hand, that the compiler restates the position of 'Sachsenspiegel,' that while the Pope has authority in questions of marriage, he cannot make any law which interferes with the "lantreht" or "lehenreht."[4] The difference in the tendencies of these two legal works serves as an illustration of the complex elements in the position of those who belonged to the empire.

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[1] Id., iii. 54, 3: "Lamen man noch meselseken man, noch den die in des paves ban mit rechte komen is, den ne mut man nicht to koninge kiesen."

[2] The 'Schwabenspiegel' belongs to the later thirteenth century.

[3] 'Schwabenspiegel,' i. 4: "Sit nu got des Frides fürste heizet, so liez er zwei swert hie up ertriche, do er ze Himel fur, ze schirme der Cristenheit. Diu lech got Sante Peter beidiu, daz eine mit geistlichem gerihte und daz ander mit wereltliken gerihte. Das wereltliche swert des gerihtes daz lihet der Pabest dem Keiser, das geistliche is dem Pabest gesezet, dass er da mit rihte."

[4] Id., vi. 2: "So en mac der Pabest doch dehein reht gesez en damit er unser lantreht oder lehenreht gekrenken müge."

In a former chapter we have discussed the whole question of the relation of Pope Innocent III. to the election of Philip of Swabia, and of Otto IV. in the German Empire, and we must not recapitulate what we said then. It is obvious that Innocent III. was determined to prevent the succession of Philip, and that he claimed the right not to elect, but to declare that a candidate for election was unfit for the office of King of the Romans. It is obvious also that this claim was emphatically repudiated by the supporters of Philip. They denounced the interference of the Papal See as a violation of all tradition and order; indeed they went so far as to say that while the election of the Pope had originally required the imperial assent and the emperors had resigned their rights, the papacy had never possessed any authority in the election of the King of the Romans.[1] It is clear, on the other hand, that the supporters of Otto IV. asked for the "confirmation" of his election by the Pope, and that Otto called himself King of the Romans by the grace of God and of the Pope;[2] and, what is perhaps more remarkable, even Frederick II.

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[1] M. G. H., 'Constitutiones,' vol. ii. 6, 3: "In Romanorum enim electione Pontificum hoc erat imperiali diademati reservatum, ut eam Romanorum imperatoris auctoritate non accommodata ullatenus fieri non liceret. Imperialis vero munificentia, quæ cultum Dei semper ampliare studuit et ejus ecclesiam privilegiorum specialitate decorare curavit, hunc honoris titulum Dei ecclesiæ reverenter remisit: quod constitutio primi Henrici evidenter explanat, cujus series sic est: 'Ut nullus missorum nostrorum cujuscunque inpeditionis argumentum in electione Romani pontificis componere audeat, omnino prohibemus.' Si laicalis simplicitas bonum, quod de jure habuit, reverenter contempsit, sanctitas Pontificalis ad bonum, quod nunquam habuit, quomodo manum ponit."

[2] Id. id. id., 19: "Paternitati ergo vestre dignum supplicare duximus, quatinus fidem et devotionem domini nostri regis (*i.e.*, Otto) attendentes . . . ipsius electionem et consecrationem auctoritate vestra confirmare et imperiali coronatione annuere paterna pietate dignemini."

Cf. 20 and 21.

Id. id. id., 27: "Reverendo in Christo Patri ac Domino, carissimo domino Innocentio Dei gratia sancte Romane sedis summo pontifici, Otto eadem gratia et sua Romanorum rex et semper Augustus debitam subjectionem ac reverentiam cum filiali dilectione."

more than once called himself King of the Romans, by the grace of God and the Pope.[1]

We have also dealt with the question of the long conflict between the popes and Frederick II., and the circumstances of his deposition by Innocent IV.; it is not surprising to find Innocent IV. making a new and far-reaching claim to authority to issue his commands to the electors as to the person whom they should elect.

He wrote in 1246 to the archbishops and princes who had the right of election, requesting (or rather commanding) them to elect the Landgraf of Thuringia.[2] It was a comparatively small matter that William of Holland should speak in 1252 of his having been elected King of the Romans by the princes, and confirmed by the Pope,[3] or that Pope Clement IV., in 1266, should have strictly forbidden the election of Conradin.[4]

All this represents the extreme limits to which the attempt to assert the political authority of the papacy over the empire was pressed in the height of the great struggle with the last of the Hohenstauffen, and of the concessions made to the papacy by the lay opponents of the Hohenstauffen. But we must not imagine that these claims were universally accepted or even acquiesced in. We have already cited the terms in which Frederick II. appealed to Europe against Innocent IV. He repudiated the claim of Innocent to the authority to depose kings and emperors: the emperor, he maintained, had no temporal superior.[1] And, as we pointed out, it would appear that St Louis himself continued to address Frederick as emperor, in spite of the sentence of deposition.[2] Manfred, in his denunciation of the action of the Pope in 1265, represents him as claiming both authorities, the papal and the imperial, and as alleging for this not only the authority of Christ but also the Donation of Constantine, but he confidently asserts that the Donation could have no validity with respect to the emperors after Constantine.[3]

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[1] Id. id. id., 58: "Sanctissimo in Christo patri et domino suo Innocentio, Sacrosanctæ Romanæ Ecclesiæ, summo pontifici F. Dei et sui gratia Romanorum Rex et semper Augustus et rex Siciliæ cum fideli subjectione debitam in omnibus apostolice sedi obedientiam et reverentiam."

[2] Id. id. id., 346: "Archiepiscopis et nobilibus viris aliis, principibus Theutonie habentibus potestatem eligendi Romanorum regem, in imperatorem postmodum promovendum. . . . Universitatem vestram monemus, rogamus et hortamur attente mandantes, in remissionem peccatorum iniungendo, quatenus de gratia Spiritus Sancti confisi, eundem Lantgravium in Romanorum regem, in imperatorem postmodum promovendum, cum præfatum imperium ad presens vacare noscatur, unanimiter absque dilationis dispendio eligatis."

[3] Id. id., ii. 359: "Per . . . summum pontificem confirmati."

[4] Id. id., 406.

It would also appear that among the popes who succeeded Innocent IV., neither Urban IV. nor Clement IV. seemed to feel that they could insist upon any supposed papal right to decide in the case of a disputed election. Richard of Cornwall and Alfonso of Castile each claimed that they had been lawfully elected, and refused, as both Urban and Clement say, to submit their claims to the papal judgment. These Popes both endeavoured to persuade Richard and Alfonso to send representatives to the papal court with authority to come to terms, but clearly refrained from urging that they had themselves the right to decide, unless the parties were willing to accept a papal decision.[4]

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[1] Id. id., 262 and 264. Cf. pp. 303, 4.

[2] Cf. p. 316.

[3] M. G. H., 'Const.,' vol. ii. 424 (16): "Nam ille improvidus Constantinus temptans sacerdotibus submittere alienum, nullius servitutis caracterem imponere potuit futuris imperatoribus, quibus solummodo indicare, non autem leges imponere concedit, codice, l. digna vox ('Code,' i. 14, 4). Cum eciam par in parem nullum imperium habeat, ut jure legitur Digestorum s. ff. De arbi. l. 'nam et magistratus' ('Digest,' iv. 8, 4), præterea quum Augustum ab augendo dici mandaverit legislator, jam dicto Constantino donante, non autem imperium ut tenebatur augente, fuit donacio illa nulla, quum et juris alieni donacio in prejudicium domini vel cujus intersit, nullius juris valletur auxilio, si Digestorum et Codicis volumina ex quiruntur."

The editor points out that there is only one MS. of this, of the fourteenth century, and that the text is in great confusion.

[4] Id. id. id., 405 (3): "Et licet inter vos judicis partes assumere non sine causa distulerit (*i.e.*, ecclesia) præsertim quum tam tui quam ipsius regis nuntii in recordationis felicis Alexandri Papæ prædecessoris nostri, nostra et fratrum nostrorum præsentia constituti, super predictis judiciarium apostolicæ sedis examen expresse usque ad hec tempora declinarint."

Id. id., 408 (2): "Nullum enim

At last, after some twenty years of confusion which followed the death of Frederick II., Rudolph of Hapsburg was elected and recognised as emperor, and it is important to observe under what terms the relations between the emperor and the papacy were referred to.

It is in the first place very noticeable that neither the German princes nor Rudolph himself, in notifying his election to Pope Gregory in 1273, asked for his confirmation. They announce his election and coronation as King of the Romans at Aix-la-Chapelle; they assure the Pope that he is a man well fitted for the empire, both in his religious character and his political position, and they ask him to receive him favourably and to call him to the imperial dignity.[1] It is true that the King of Bohemia wrote to the Pope and protested against

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ferre angulum ipsius latere debet imperii, quod de predictis electis, hujus modi electionibus in discordia celebratis et electis ipsis non curantibus subiri judicium, sed propriis se velle inniti viribus expresse dicentibus."

[1] M. G. H., 'Const.,' iii. 14 (2): "De communi consensu omnes et singuli . . . eum (*i.e.*, Rudolfum) in regem Romanorum, imperatorem futurum, auctore altissimo, una voce votoque unanimi unaniminiter eligentes. (3) Qua quidem electione canonice, immo divinitus procul dubio celebrata, eundem cum inenarrabilis immensitate tripudii, omnium applaudente caterva nobilium necnon populi comitiva letante ac in superne laudis canticum gratulabundus assurgente, apud Aquisgranum ut pote sedem, que primum sublimacionis et gloriæ regiæ gradum ponit, magnifice duximus, ubi tali die a nobis Coloniensi Archiepiscopo, cujus interest regibus ab antiquo beneficium consecracionis impendere, fuit in sede magnifici Caroli coronatus et unctionis sacerime oleo delibutus. (4) Et ut de regis electi sic et coronati persona sacrosanctæ Romanæ ecclesiæ matris nostræ piissime nova congaudia cumulentur, idem rex est fide catolicus, ecclesiarum amator, justiciæ cultor, pollens consilio, fulgens pietate, propriis potens viribus et multorum potentum affinitate, connisus, Deo, ut firmiter opinamus, amabilis et humanis aspectibus graciosus ac insuper corpore strenuus et in rebus bellicis contra perfidos fortunatus. . . .

(5) Vos itaque quæsumus, pater sancte, benigne suscipite filium singularem quem procul dubio sencietis intrepidum matris ecclesiæ pugilem et invictum catolicæ fidei defensorem. Processum vero tam rite tam provide, tam mature, de ipso sic habitum graciose approbacionis applausum benivalo prosequentes ac ex affluenti paterna dulcedine pietatis opus Dei perficientes in ipso, eundem cum vestre sanctitati placuerit et videritis oportunum, ad imperialis fastigii diadema dignemini misericorditer evocare, ut sciant et intelligant universi, quod posuerit vos in lucem gencium dominus, et per vestræ discrecionis arbitrium orbi terræ post nubilum exoptata serenitas illucescat."

Cf. id. id., 15 and 21.

the election, but it would not appear that this was taken very seriously by any one.[1]

Gregory X., however, as late as January 1274, addressed Rudolph as King of the Romans elect,[2] and it was not till September 1274 that he thought it proper to address him as king. He intimates to Rudolph that for sufficient reasons he had hitherto not given him the designation of king, but now, after due deliberation with his brethren (*i.e.*, the cardinals) and by their advice, he "names" (nominamus) him king, and tells him to make preparation for the imperial coronation at an early date.[3]

It is not very easy to determine how much exactly this implies. Rudolph, writing to Pope Innocent V. on the latter's accession in 1276, used language which might be taken as implying that it was Gregory who had established him on his throne;[4] and, writing to Pope John XXI. in September of the same year, says that he placed all things under his control and desired to have him as ruler in the kingdom.[5] With these phrases we may compare some words of the 'Privilegium' of 1279, in which Rudolph recognised, in general terms, the great benefits which his predecessors had received from the Roman Church, and especially that it was the Church which had transferred the empire from the Greeks to the Germans.[6] The German princes, in confirming this 'Privilegium’ in the same year, also recognised that it was the Roman Church which had conferred the supreme temporal authority in the world on Germany, and established the princes as the electors of the emperor; and they speak of the emperor as that lesser luminary which was illuminated by the greater—that is, the vicar of Christ,—and say that the emperor is to draw the material sword at his command (ad ipsius nutum).[1]

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[1] Id. id., 16.

[2] Id. id., 26.

[3] Id. id., 66: "Licet itaque, non sine causa distulerimus hactenus regiam tibi denominationem ascribere, cum fratribus tamen nostris deliberatione prehabita, te regem Romanorum de ipsorum consilio nominamus."

[4] Id. id., 106: "Præter alia . . . que pro bono statu catholice fidei orthodoxe concepit et statuit, thronum nostrum super reges et regna constituens."

[5] Id. id., 118: "Quomodo igitur a semitis vestris declinavimus et a via mandatorum vestrorum aliquatenus recidemus, qui omnia vobis subicimus, cuncta vestris manibus tradimus, vobis vivere et in regno vos rectorem habere volumus, sic ut inter nos sit ydemptitas mencium et inseparabilis unio voluntatum."

[6] Id. id., 222 (2): "Prefati itaque predecessores, ad magnificentiam munerum et graciarum quodammodo ineffabilem largitatem, quæ de ipsius matris ecclesiæ uberibus susceperunt, faciem gratitudinis convertentes nec minus attendentes, quod eadem mater ecclesia ipsos in dulcedinis benedicione preveniens transferendo de Græcis Imperium in Germanos, eisdem dederunt id quod erant, ut grati prædicarentur filii laubabile recognicionis effectum, inter cetera quæ ipsi Romanæ

These phrases go further than any others used by Rudolph and the princes towards admitting the authority of the Pope in temporal matters, but it should be observed that Rudolph also wrote in terms which suggest very clearly the principle of the distinction of the two powers. The ‘Privilegium’ of 1279, to which we have just referred, begins with a statement that the sacred authority of the “Pontifex” and the royal power are the greatest gifts of God, and that as Christ exercised the two powers, each is derived from him. In a letter of 1286, in which he requested the Archbishop of Cologne to excommunicate the Count of Cleves, who had been for some time under the ban of the empire, he begins by citing the Gelasian phrases that there are two powers by which the world is ruled, the pontifical authority and the royal, which are separate and distinct, and urges that they should mutually aid each other, and that the sword of the one should constrain those who resist the jurisdiction of the other.[2]

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ecclesiæ confirmarunt, dimiserunt seu etiam concesserunt, totam terram quæ est a Radicofano usque Ceperanum, etc.”

[1] Id. id., 225: “Complectens ab olim sibi Romana mater ecclesia quasi quadam germana caritate Germaniam illam eo terreno dignitate decoravit, quod est super omni nomen temporaliter, tantum presidentium super terram, plantans in ea principes tanquam arbores prelectos, et rigans ipsas gratia singulari, illud eis dedit incrementum mirande potentie, ut ipsius ecclesiæ auctoritate suffulti velut germen electum per ipsorum electionem illum, qui frena Romani teneret imperii, germinarent. Hic est illud luminare minus in firmamento militantis ecclesiæ per luminare maius, Christi vicarium illustratum. Hic est qui materialem gladium ad ipsius nutum excutit et convertit.”

[2] Id. id., 222: “Summa respublicæ tuicio de stirpe duarum rerum sacerdocii et imperii divina institucione progrediens, vimque suam exinde muniens humanum genus salubriter gubernabit in posterum et reget Deo propicio in eternum. Hec sunt duo dona Dei maxima quidem in omnibus a superna collata clemencia, videlicet

It is also noteworthy that Pope Gregory X., writing to Rudolph in 1275 about a date for the imperial coronation, also speaks in terms which recognise very explicitly the distinctive character and the divine origin of both powers. The civil wisdom, he writes, has rightly said that the "sacerdotium" and the "imperium" do not greatly differ. They are the two greatest gifts of God, and were instituted for the perfect government of the world, and need each other's help: the one should minister in spiritual things, the other should rule over human affairs. They were instituted inseparably for one and the same final cause, in spite of the diversity of their ministries.[1]

When we endeavour to sum up the impression which is left upon us, after considering the materials with which we have dealt in this chapter, it seems to us to be clear that the conception that the papacy possessed, even in principle, a supreme temporal authority, was, for the most part, emphatically repudiated. The position of the Empire was, no doubt, somewhat different from that of other European countries, but even there, except in the 'Schwabenspiegel,' and even after the destruction of the Hohenstauffen, while

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auctoritas sacra pontificum et regalis excellencia potestatis. Hec duo salvator noster mediator Dei et hominum Jesus Christus sic per se ipsum actibus propriis et dignitatibus distinctis exercuit, ut utraque ab ipso tanquam ex uno eodemque principio manifeste procedere omnibus indicaret."

Id. id., 386: "Quoniam duo sunt quibus principaliter regitur orbis terræ, sacra videlicet pontificalis auctoritas et regalis potestas, non minus utile quam necessarium fore dinoscitur juxta legitimas sanctiones, utriusque potestatis officia, discreta divinis actibus distinctis dignitatibus et distincta, sibi alterne subvencionis suffragio subveniant, ut sic mutuo interveniente succursu, quos unius jurisdictionis coercio a malo non revocet, alterius saltem potestatis gladius a contumacia coerceat ac peccato, et per hoc utriusque vigor in suo permaneat robur firmitatis."

[1] Id. id., 77: "Sacerdotium et imperium non multo differre merito sapientia civilis asseruit. Si quidem illa tamquam maxima dona Dei a cœlesti collata clementia principi conjungit idemptitas, ea velut auxiliis mutuis semper egentia suffragiis suis inter ipsa vicibus alternandi unit necessitas et ad perfectum mundi regimen instituta, ut alterum videlicet, spiritualibus ministret, reliquum vero presit humanis, una et eadem institutionis causa finalis ipsa inseparabiliter, licet sub ministeriorum diversitate conjuncta designat."

the Popes sometimes claim a special authority with regard to the election of the German King, it cannot be said that there was any acceptance of the extreme claims of the later Canonists. And outside of the Empire there was no recognition at all, but rather the affirmation of the contrary principle that the temporal and the spiritual powers were separate and distinct.

It is, however, true that these claims had been made, not indeed officially and authoritatively, but by Canonists and some ecclesiastical writers. We must now therefore consider whether, or how far, these claims lie behind that great conflict between the papacy and the secular power, in which Boniface VIII. and Philip the Fair of France were the protagonists.

CHAPTER VIII.

BONIFACE VIII. AND PHILIP THE FAIR.

We have arrived at the last stage of the great conflict of the Middle Ages between the spiritual and temporal powers. It is true that the literary controversy continued for some time, and we hope in another volume to deal with this, for it had some practical importance, especially with relation to the empire. In fact, however, the tragic end of Boniface VIII. marks the close, for all practical purposes, of the attempt to claim on behalf of the papacy a universal temporal authority. In fact, if the papacy had seemed to triumph in the destruction of the Hohenstauffen, the political authority of the mediæval papacy was also destroyed within fifty years, when it came into conflict with the national monarchy of France.

We are not writing a history of the pontificate of Boniface VIII., and we confine ourselves to the attempt to set out briefly the progress of the struggle between him and Philip the Fair, as it can be traced in the documents, letters, and pamphlets in which are stated and criticised the claims of Boniface and his supporters.[1]

Among the first public actions of his pontificate was the attempt to impose peace on the cities of Italy and the northern nations. In May 1295 he commanded various cities of Lombardy, Venice, and Genoa to send representatives to Rome, where they were to arrange the terms of peace, and he commanded this under the threat of excommunication.[1] In the same month he wrote to the Kings of France and England announcing to them that he was sending legates who should endeavour to arrange peace between them, and at the same time he commanded England, France, and Germany to accept a truce for a year, under pain of excommunication.[2] In September 1296, in the Bull "Ineffabilis Amoris," he urged on Philip the Fair of France that the questions at issue between him and England and Germany were questions of sin, and that these belonged to the jurisdiction of the Holy See.[3]

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[1] We wish to express our very great obligations, throughout this chapter, to the admirable work of Dr Richard Scholz, 'Die Publizistik zur Zeit Philipps des Schönen und Bonifaz VIII.'

This claim of Boniface VIII. was, it seems, at once repudiated by Philip the Fair, as we see from the letter of the papal legate of 20th April 1297. In this letter the legate gives an account of the interview between himself and Philip with regard to a truce between him and the King of England. When he was about to present the Pope's letter, and before the letter was read, Philip caused a protest to be made, in which it was emphatically declared that the temporal rule of the kingdom belonged to himself alone, and to no one else, that he recognised no superior to himself in his kingdom, and that he would not submit himself to any one in matters belonging to the temporal rule of the kingdom.[4]

It is evident that Boniface had to give way upon the matter, for, in a letter of July 1298 to Philip, Boniface says plainly that while Philip of France and Edward of England had committed some part of the matter in dispute between them to his arbitration, this was only done on the understanding that he was acting not as Pope, but as a private person, Benedict Gaietani, and he promises that he would not deal with any part of the matter in dispute other than that which had been mentioned, without Philip's consent to be intimated in "patent letters." [1]

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[1] Boniface VIII. Registrum, 780, 812, 813.

[2] Id. id., 868, 869, 870.

[3] Id. id., 1653, "Ineffabilis Amoris": "Numquid super hiis dicti reges denegant stare juri? Numquid Apostolice sedis, que Christicolis omnibus preminet, judicium vel ordinationem recusant? Denique in eos super hiis, ipsi peccare te asserunt, de hoc judicium ad sedem eamdem non est dubium pertinere."

[4] Dupuy, 'Histoire du Differend d'entre le Pape Boniface VIII. et Philippe le Bel,' ed. 1655, 'Preuves,' p. 27: "Cumque dictas litteras presentaremus dicto Regi Franciæ legendas, idem rex incontinenter, antequam eædem litterae legerentur, nomine suo, et se præsente, fecit exprimi et mandavit in nostra præsentia protestationes hujusmodi, et alia quæ sequuntur: videlicet, regimen temporalitatis regni sui ad ipsum regem solum et neminem alium pertinere, seque in eo neminem superiorem recognoscere, nec habere, nec se intendere supponere vel subjicere modo quocunque viventi alicui, super rebus pertinentibus ad temporale regimen regni."

These letters, indeed, are not in the Register of Boniface VIII., but the statement that Boniface was accepted as arbitrator only on the understanding that he was acting as a private person, is confirmed by the terms of several letters in the Register.[2]

It was in another matter that the first really important conflict between him and the temporal power began. It was in February 1296 that Boniface issued the famous Bull, "Clericis Laicos," in which, after complaining bitterly of the attempts of the laity to impose heavy burdens upon the clergy, he absolutely forbade the clergy to pay "collectas vel tallias, decimam, vicesimam seu centesimam suorum et ecclesiarum proventuum vel bonorum" to the laity without the permission of the Holy See, and declared that those who paid such exactions, and all emperors, kings, or other secular authorities who should impose such exactions, would incur, "eo ipso," the sentence of excommunication.[3]

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[1] Id. id. (p. 41), "Licet per speciales": "In nos tamquam in privatam personam, et Benedictum Gaietanum tanquam in arbitrum, arbitratorem, laudatorem, diffinitorem . . . absolute et libere compromiseris. . . . Nos tamen ad tuam cautelam et ut securius in nostra puritate quiescas, serenitati tuæ presentium tenore prædicimus, et expresse promittimus, quod præter contenta in iis quæ jam pronuntiata noscuntur, nostræ nequaquam intentionis existit ad aliquam in reliquis pronuntiationem, vel diffinitionem in hujusmodi negotio ex predicto compromisso procedere, sine tuo expresso consensu prehabito, a te per patentes litteras tuas, et per specialem nuntium destinando."

[2] Cf. Boniface VIII. Register, 2810, 2811.

[3] Id. id., 1567, "Clericis Laicos": "Nos igitur talibus iniquis actibus obviare volentes, de fratrum nostrorum consilio, apostolica auctoritate statuimus quod quicunque prelati ecclesiasticeque persone religiosi vel seculares, quorumcunque ordinum, conditionis seu statuum, collectas vel tallias, decimam, vicesimam seu centesimam suorum et ecclesiarum proventuum vel bonorum laicis solverint vel promiserint, vel se soluturos consenserint, aut quamvis aliam quantitatem, por-

The bull produced a violent opposition in England and France. In England, Archbishop Winchelsey, at the Parliament held in November 1296, maintained that the clergy could not, in view of the papal prohibition, grant the aid which the king demanded. The king replied by putting the clergy out of the royal protection, and the clergy were compelled to give way, the archbishop recommending the clergy to act each on his own individual responsibility.[1] In France the opposition was equally determined, and Boniface himself in the course of a year had to give way. In September 1296 he assured Philip that the Bull "Clericis Laicos" did not forbid the clergy to grant him aids for the defence and other necessities of the kingdom, but only forbade them to do this without the papal permission, his object being to protect the clergy against intolerable exactions; and he added that the bull had no reference to the obligations and aids which the clergy were bound to render in respect of their feudal tenures.[2] In February and March 1297, in response to the

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tionem, aut quotam proventuum vel bonorum, extimationis vel valoris ipsorum sub adiutorii, mutui, subventionis, subsidii, vel doni nomine, seu quovis alio titulo, modo vel quesito colore, absque auctoritate sedis eiusdem; necnon imperatores reges seu principes, duces, comites, vel barones, potestates, capitanei, officiales, vel rectores, quocunque nomine censeantur, civitatum, castrorum seu quorumcunque locorum constitutorum ubilibet, et quivis alius cuiuscunque preminentiæ, conditionis et status, qui talia imposuerint, exegerint vel receperint, aut apud edes sacras deposita ecclesiarum vel ecclesiasticarum personarum ubilibet arestaverint . . . necnon omnes qui scienter in predictis dederint auxilium, consilium vel favorem, publice vel occulte, eo ipso sententiam excommunicationis incurrant . . . a supradictis autem excommunicationum et interdicte sententiis nullus absolvi valeat præterquam in mortis articulo absque sedis apostolice auctoritate et licentia spetiali."

[1] Cf. Stubbs' 'Constit. Hist.,' vol. ii. chap. 14, sect. 180.

[2] Id. id., 1653, "Ineffabilis Amoris": "Non enim precise statuimus, pro defensione ac necessitatibus tui vel regni tui ab eisdem prelatis, ecclesiasticisve personis pecuniarium subsidium non prestari, sed adjecimus id non fieri sine nostra licentia speciali; aductis in considerationem nostram, exactionibus intolerabilibus ecclesiis et personis ecclesiasticis, religiosis et secularibus dicti regni, ab officialibus tuis auctoritate tua impositis atque factis; de futuris potius verisimiliter formidantes, cum ex preteritis certitudo presumi valeat de futuris . . .

Sunt et alii, sicut ad nostram notitiam est deductum, qui maligne surripiunt, dicentes, jam non poterunt prelati et persone ecclesiastice regni tui servire de feudis, vel subventiones facere, in quibus feudorum ratione tenentur; jam non poterunt unum

request of the archbishops and bishops of France, he gave them permission to make a reasonable subvention to the King of France, provided it was made freely and without coercion ; they were to inform the Pope of the amount granted, that he might see whether it was moderate. The grant was to be for that year only, and was not to be repeated without the renewed permission of the Pope.[1] In March and May 1297 we find Boniface authorising a contribution of one-tenth to the king by all the ecclesiastical persons and bodies in France.[2] In August 1297 he granted the first fruits of all ecclesiastical dignities in France, except those of archbishops, bishops, and abbots, to Philip during the time of the war.[3] He had, however, already, in July 1297 in a letter addressed to the bishops, clergy, nobles, and others in France, substantially withdrawn the prohibition of the “Clericis Laicos.” His decree, he says, had been misinterpreted ; it was not intended to prohibit a voluntary grant by the bishops or ecclesiastical persons, even if this were demanded by Philip or his successors, or other temporal lords. The decree had no reference to feudal dues and other customary services to the crown ; and he adds that it should not apply to the case of the imminent danger or necessity of the kingdom. The king, therefore, might demand and the clergy might

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sciphum, unum equum dare liberaliter regi suo. Non fertur ad tales et consimiles interpretationes subdolas dicte nostre constitutionis intentio.”

[1] Id. id., 2333 : “Vestris itaque in hac parte supplicationibus annuentes . . . liceat vobis et eisdem prelatis ecclesie et personis ecclesiasticis, absque metu constitutionis nostre predicte, ipsi regi pro hujusmodi vestre ac ipsorum regis et regni intrinsece defensionis subsidio, subventionem congruam, prout vobis et ceteris prelatis regni prefati seu majori parti vestrum et ipsorum videbitur, voluntariam, liberalem et liberam, non coactam, absque omni concussione, exactione et executione temporali vel laycali exigendam, hac vice presente nostra fretis licentia impertiri, eamque similiter regi liceat recipere memorato. Volumus autem quod, si subventionem hujusmodi præstari contingat, formam et modum et quantitatem etiam ac quicquid super hoc factum extiterit nobis per vestras litteras seriosius intimare curetis, ut quantum discrete vel indiscrete, moderate vel immoderate premissa precesserint et acceptationem vel moderationem exegerint clarius videamus. Scire quoque vos volumus nostre intentionis existere quod sine iterata licentia hujusmodi subventio annualem terminam non excedat.”

Cf. id. id., 1933.

[2] Id. id., 1822, 1829.

[3] Id. id., 2367.

grant an aid or contribution for the defence of the realm without consulting the Pope, notwithstanding the terms of the decree ("Clericis Laicos") or any privilege granted by the Apostolic See. He assures them that he had had no intention by this decree of destroying any of the laws, liberties, privileges, or customs of the king or kingdom.[1]

It would seem evident that Boniface had been worsted in his second conflict with the temporal powers, and had to withdraw his claim.

It is with these claims of Boniface to forbid the taxation of the clergy that the unknown author of the tract entitled 'Disputatio inter Clericum et Militem' seems specially to deal; and, though it cannot be dated with any precision, it seems probable that it belongs to the years from 1296 to 1298.[1]

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[1] Id. id., 2354, "Noveritis Nos": "Nos igitur declaramus, quod constitutio ipsa vel ejus prohibitio ad donaria vel mutua seu quevis alia voluntaria prelatorum et personarum ecclesiasticarum ejusdem regni, cujuscunque status, ordinis vel conditionis existant, omni prorsus occasione aut exactione cessante, se aliquatemus non extendat, licet ad id forsitan . . . Philippi Regis . . . vel successorum suorum . . . aut nobilium vel aliorum dominorum temporalium de regno predicto, requisitio curialis et amica precedat; quodque feudalia, censuaria sive jura quælibet in rerum ecclesiasticarum datione retenta, vel alia servitia consueta regi ejusque successoribus, ducibus, comitibus, baronibus, nobilibus et aliis temporalibus dominis supradictis, tam de jure quam de consuetudine a personis ecclesiasticis debita, prefata constitutio non includat vel aliquatenus comprehendat . . . Adjicimus insuper hujusmodi declaracioni nostre quod, si prefatis regi et successoribus suis pro universali vel particulari ejusdem regni defensione periculosa necessitas immineret, ad hujusmodi necessitatis casum se nequaquam extendat constitutio memorata.

Quin potius idem rex ac successores ipsius possint a prelatis et personis ecclesiasticis dicti regni petere ac recipere pro hujusmodi defensione subsidium vel contributionem, illudque aut illam prelati et personæ predicti sepefato regi suis successoribus inconsulto etiam Romano pontifice, teneantur et valeant, sub quote nomine aut alias etiam, impertiri, non obstantibus constitutione predicta, seu quovis exemptionis vel alio quolibet privilegio, sub quacunque forma confecto, a sede apostolica impetrato. . .

Quodque præterea intentionis nostræ, non extitit, nec existet, per constitutionem predictam seu declarationem presentem jura, libertates, franchysias, seu consuetudines, quæ prefatis regi et regno, ducibus, comitibus, baronibus, nobilibus et quibusvis aliis temporalibus dominis, editionis prefati constitutionis tempore, ac etiam ante illud competere noscebantur, tollere, diminuere vel quovis modo mutare, aut eis in aliquo derogare, seu novas servitutes vel submissiones imponere, sed jura, libertates, franchysias, et consuetudines supradictas pretactis regi et aliis illesas et integras conservare."

The tract is noteworthy for its explicit and reasoned repudiation of the claim of the supremacy of Church Law and the Holy See over Secular Law and secular authorities. It is in the form of a dialogue between a clerk and a knight, and begins with a complaint on the part of the clerk that the Church and its liberty was oppressed by financial exactions and disregard of its laws. The knight asks what he means by law (jus). The clerk replies that he means the decrees of the Fathers and the statutes of the Roman Pontiff. The knight replies roundly that these laws, so far as they refer to temporal matters, may be law to the clergy, but have no authority over the laity, for no one can make laws where he has no "dominium"; and as the princes have no authority to make law on spiritual matters, the clergy have none to do this in temporal matters.

The clerk then argues that Christ is Lord of all, and Peter is his vicar: how can they refuse to recognise that the vicar of Christ has the same authority as Christ? The knight replies by saying that he had heard that there were two "tempora" in Christ, one of humility, the other of power. Peter was Christ's vicar, "pro statu humilitatis, non pro statu glorie et majestatis." Christ said that his kingdom was not of this world, and refused to act as a judge. Christ in the world neither exercised the temporal authority nor committed it to Peter. The clerk then urges the authority of the Church in matters of sin, and therefore of justice. The knight replies that the authority of judging according to the law, in questions of justice and injustice, belongs to him who has authority to make the laws. The clerk contends that temporal things should serve the spiritual, and that the spiritual power should rule the temporal. The knight replies that he quite recognises that spiritual persons should receive such things as they need for their support, but this does not mean that they have authority in temporal matters. He then turns upon the clerk and warns him that the temporal power is concerned with the use which the clergy make of that which is given them for pious purposes. The clerk complains that the kings have been annulling the privileges which had been conferred upon the Church by law, and the knight argues that this had been justified by necessity. When finally the clerk contends that the emperor might have such powers, but not a king, the knight describes this as flat blasphemy, for the King of France is in every respect of the same dignity and authority as the emperor.[1]

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[1] For a full discussion of the date and authorship of this work, cf. R. Scholz, 'Die Publizistik zur Zeit Philipps des Schönen,' &c.

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[1] 'Disputatio inter Clericum et Militem,' p. 75:

"Clericus: Ecclesia facta est vobis omnibus præda; exiguntur a nobis multa, dantur nulla; si nostra bona non damus, rapiuntur a nobis, conculcantur jura nostra, libertates effringuntur, . . . immo certe contra omne jus, injurias innumeras sustinemus. . . .

Miles: Scire vellem quid vocatis jus?

Clericus: Jus vero decreta patrum, et statutum Romanorum Pontificum.

Miles: Quæ illi statuunt, si de temporalibus statuunt vobis possunt jura esse, nobis vero non sunt; nullus enim potest de iis statuere, super quos constat ipsum dominium non habere. Sic nec Francorum rex potest statuere super imperium: nec imperator super regnum Franciæ. Et quemadmodum terreni principes non possunt aliquid statuere de vestris spiritualibus, super quæ non acceperunt potestatem, sic nec vos de temporalibus eorum super quæ non habetis auctoritatem. . . . Unde semper mihi risus magnus fuit cum audissem noviter statutum esse a domino Bonifacio octavo, quod ipse est et esse debet super omnes principatus et regna, et sic facile potest sibi jus acquirere super rem quamlibet. . . .

Miles: Nullo modo divinæ potestati vel dominationi resisto: quia Christianus sum et esse volo, et ideo, si per diversas scripturas ostenderitis, summos pontifices esse super omnia temporalia dominus, necesse est omnino reges et principes summis pontificibus tam in spiritualibus quam in temporalibus esse subjectos.

Clericus: Facile hoc est, ex superioribus posse ostendi. Tenet enim fides nostra Petrum Apostolum pro se et suis successoribus institutum esse plenum vicarium Jesu Christi. . . . Si ergo non negatis Christum de vestris temporalibus statuere posse qui dominus est coeli et terræ, non potestis sine rubore eandem potestatem Christi pleno vicario denegare.

Miles: Audivi a viris sanctis ac doctissimis duo tempora in Christi distingui, . . . alterum humilitatis et alterum potestatis. . . . Petrus autem constituitur Christi vicarius pro statu humilitatis, non pro statu gloriæ et majestatis. Non enim factus est Christi vicarius ad ea quæ Christus nunc agit in gloria: sed ad ea imitanda, quæ Christus egit humilis in terra. . . . Auditis ergo, aperte, Christum in temporalibus nec judicem, nec divisorem constitutum: ergo in statu illo susceptæ dispensationis, nec temporale regnum habuit, nec etiam affectavit. . . . Patet ergo, Christum regnum temporale non exercuisse nec Petro commisisse. . . .

Clericus: Negatis, o Miles, eccle-

Another tract which seems to belong to this time argues with similar determination for the principle that the king has the right to demand contributions from the clergy towards the necessities of the country. It begins with the assertion that the Church consists not only of the clergy but of the laity, and that the clergy must not speak as though the liberty of the Church meant only the liberty of the clergy. There are, indeed, special liberties of the clergy granted by the popes, with the goodwill and permission of the secular princes, but these liberties cannot take away the authority of kings in the government and defence of their kingdoms. Those members of the body, whether clergy or laity, noble or ignoble, who refuse their help to the head—that is, the king—show that they are useless members. It is a matter of astonishment that the vicar of Christ should forbid (men)

siam cognoscere de peccato. . . . Cum ergo justum et injustum in negociis rerum temporalium sit, consequens etiam est ut de causis temporalibus debet judicare. . . .

MILES: Manifestum est ergo illum debere secundum leges judicare, et secundum easdem de justo et injusto cognoscere, cujus est leges condere, et habere interpretari, exponere et custodire, facere et gravare et mollire, cum videbitur expedire. . . .

CLERICUS: Nonne debent temporalia spiritualibus deservire. Ergo temporalia debent esse subjecta spiritualibus, et spiritualis potestas temporalem debet regere potestatem.

MILES: Vere debent spiritualibus temporalia deservire suo casu, quia tenentur Dei cultoribus necessaria ministrare. . . . Videtis quod temporalia conceduntur vobis non ad dominium, sed ad vitæ subsidium et ad spiritualis ministerii sumptum. . . . Dictum enim vobis est superius, quod hæc accipistis omnia ad vitæ subsidium et ad sanctæ militiæ stipendia ad victum habendum et vestitum. . . . Et quicquid superest, in pios usus pauperum et miserias ægrotantium expendere debetis. Quod si non feceritis multum nostra interest, de eisdem curam habere, ne animas mortuorum salutemque vivorum defraudetis. . . .

CLERICUS: Num quid per reges tollendæ sunt gratiæ nobis per leges concesse, et per beatorum principum privilegia sanctæ ecclesiæ concessa. . . .

MILES: Igitur non est dubium quin pro regni necessititibus gratias vobis indultas, legibusque sancitas, possunt altissimi principes consultiori suspendere ratione, et secundum exigentiam temporis utare.

CLERICUS: Imperatores sanxerunt ista, non reges, ed ideo per bonos imperatores, o miles, nunc erit legum gubernacula moderari.

MILES: Hoc responsum est blasphemia. . . . Et ideo domine clerice linguam vestram coercite et agnoscite legem legibus, consuetudinibus, et privilegiis vestris et libertatibus datis, regia potestate præ-esse, posse addere, posse minuere quælibet, equitate et ratione consultis, aut cum suis proceribus, sicut visum fuerit temporare."

to pay tribute to Cæsar, and to render assistance to their king and kingdom against an unjust attack.[1]

It is then clear, as we have said, that Boniface VIII. had been compelled to withdraw from the two positions which he had taken up: the claim that he had the right to intervene authoritatively in the conflicts between the northern countries, and the claim to forbid the taxation of the clergy: the Bull "Noveritis Nos" does represent a very complete withdrawal.

It is not our part here to describe the history of the events between 1297 and 1301, when the relations between Boniface VIII. and Philip the Fair again became openly hostile. We find Boniface VIII. complaining in January 1299 that his grant of the first fruits had been misinterpreted and misused, and in April of the same year that Philip would not surrender the "Regalia" of the diocese of Rheims, which he had occupied during its vacancy.

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[1] Dupuy, 'Histoire du Differend,' &c., 'Preuves,' p. 21: "Sancta Mater Ecclesia, sponsa Christi, non solum ex clericis, sed etiam ex laicis: imo sacra testante Scriptura sicut est unus Dominus, una fides, una baptisma, sic a primo usque ad ultimum, ex omnibus Christi fidelibus, una est Ecclesia, ipsi Christo, coelesti sponso, anulo fidei desponsata, quam ipse a servitute peccati, et jugo veteris legis, ac dominio hostis antiqui, per mortem suam misericorditer liberavit; qua libertate gaudere voluit omnes illos, tam laicos quam clericos. . . . Et quia clerici in Ecclesia, ut patet per predicta, sunt, et merito, et numero potiores, non debent, non possunt, nisi forsitan per abusum sibi appropriare, quasi aliis excludendo, ecclesiasticam libertatem, loquendo de libertate, qua Christus nos sua gratia liberavit.

Multæ vero sunt libertates singulares, non universalis Ecclesiæ, sponsæ Christi, sed solum ejus ministrorum, qui cultui divino ad ædificationem populi sunt, vel esse debent spiritualibus deputati: quæ quidem libertates per statuta Romanorum Pontificum, de benignitate vel saltem permissione Principum secularium sunt concessæ, quæ quidem libertates, sic concessæ vel permissæ ipsis Regibus suorum gubernationem ac defensionem auferre non possunt: nec ea quæ dictæ gubernationi et defensioni necessaria, seu expedientia, deliberato bonorum ac prudentium consilio judicantur, dicente Domino Pontificibus Templi, 'Reddite ergo quæ sunt Cæsaris, Cæsari, et quæ sunt Dei, Deo.'

Et quia turpis est pars quæ suo non congruit universo, et membrum inutile, et quasi paralyticum, quod corpori suo subsidium ferre recusat, quicunque sive clerici, sive laici, sive nobiles, sive ignobiles, qui capiti suo, vel corpori, hoc est domino Regi et regno . . . auxilium ferre recusant, semetipsos partes incongruas, et membra inutilia, et quasi paralytica demonstrant.

Et quis, sapiens et intelligens hæc, non incidit in vehementem stuporem, audiens vicarium Jesu Christi prohibentem tributum dari Cæsari, et sub anathemate fulminantem ne clerici, contra iniquæ et injustæ persecutionis incursus, domino Regi et Regno, imo semetipsis, pro rata sua, manum porrigant adjutricem."

It was in December 1301 that the storm broke. Three letters, or bulls, contain the record of this. On 4th December Boniface had issued the Bull, "Salvator Mundi," by which he suspended, at the discretion of the Holy See, all the special "privilegia" and favours which he had conferred upon Philip, on the ground that they had been abused to the great injury of the churches and ecclesiastics of the kingdom of France.[1]

On 5th December Boniface wrote to Philip that he had heard that he had caused the Bishop of Pamiers to be brought before him, and had committed him to the custody of the Archbishop of Narbonne. He therefore asks and exhorts and commands Philip to set the bishop at liberty, and to permit him to come to Rome, and warns him that unless he can show some reasonable cause for his action, he must be held to have incurred the sentence imposed by the canons on those who laid their hands on a bishop.[2]

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[1] Boniface VIII. Register, 4422 ("Salvator Mundi"): "Nos igitur attendentes quod nonnulla privilegia, indulgentias et gratias carissimo in Christo filio nostro Philippo Regi Francorum illustri ejusque successoribus, et specialiter pro defensione regni sui sub certis formis duximus concedenda, et gratiose aliqua concessimus clericis et laicis, qui de suo et successorum suorum stricto consilio fuerint vel majori parti eorum: quorum privilegiorum, gratiarum, indulgentiarum et concessionum occasione, per abusum, ecclesiis et ecclesiarum prelatis ac personis religiosis et secularibus dicti regni magna dispendia et gravamina sunt illata, et gravia scandala sunt exorta et inantea possunt oriri: ac precaventes ne tali pretextu supradictæ ecclesiæ, prelati ac personæ ecclesiasticæ plus graventur, providimus super hoc salubre remedium. Unde illa omnia quantum ad omnem ipsorum effectum, de fratrum nostrorum consilio, usque ad predicti sedis bene placitum diximus suspendenda: illa maxime que occasione guerrarum, quibus dicti regni status pacificus turbabatur tunc temporis, fuere concessa."

[2] Id. id., Register, 4432 ("Secundum divina"): "Sane ad nostrum pervenit auditum, quod tu venerabilem fratrem nostrum Appamiarum Episcopum personaliter ad præsentiam tuam deduci fecisti sub tuorum cauta custodia, utinam non invitum! Quem sub colore securitatis personæ ipsius, custodiendum dixeris commisisse fratri nostro Narboniensi Archiepiscopo, Metropolitano ipsius. Magnitudinem

On the same day Boniface issued the Bull "Asculta Fili," in which he enumerated his complaints against Philip, and asserted his authority in very strong terms. He begins with the assertion that God had placed him over all kings and kingdoms, with authority to destroy and to build up, and he warns Philip not to allow any one to persuade him that he had no superior, and that he was not subject to the head of the Ecclesiastical Hierarchy. He who should pertinaciously assert this was an infidel and outside of the fold of the good Shepherd.[1]

The principal complaints which he made against the conduct of Philip were that he was oppressing his subjects, the clergy, the counts and nobles, the communities and the whole people of his kingdom; that he prevented the Holy See from exercising its legal rights with regard to vacant dignities, benefices, canonries, and prebends; that he compelled prelates and other ecclesiastical persons to appear in his courts, in regard to personal questions, rights, and goods, which were not held from him by feudal tenure, while laymen had no authority in such cases; that he did not permit the free exercise of the spiritual sword against those who injured the clergy, or the

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igitur tuam rogamus et hortamur attente, per apostolica tibi scripta maudantes, quatenus eumdem episcopum, cujus volumus habere præsentiam, abire libere, et ad nostram præsentiam securum venire permittas, omniaque bona mobilia etc. . . . sibi restitui facias . . . nec in antea ad similia per te vel tuos occupatrices manus extendas; habiturus te taliter in premissis, quod majestatem non offendas Divinam, nec sedis apostolicæ dignitatem, nec oporteat nos aliud remedium adhibere: sciturus, quod, nisi ad excusationem tuam aliquid rationabilem coram nobis propositum fuerit vel ostensum, et premissis veritas suffragetur, quin incurreris sententiam canonis, propter injectionem temerariarum manuum in dictum episcopum, non videmus."

[1] Id. id., 4424 ("Asculta Fili"): "Sane fili, cur ista direximus, imminente necessitate et urgente conscientia, expressius aperimus. Constituit enim nos Deus, licet insufficientibus meritis, super reges et regna, imposito nobis jugo apostolicæ servitutis, ad evellendum, destruendum, edificandum atque plantandum, sub ejus nomine et doctrina, et ut, gregem pascentes dominicum, consolidemus infirmos, sanemus ægrota, alligemus fracta, et reducamus abjecta, vinumque infundamus et olium vulneribus sanciatis. Quare, fili carissime, nemo tibi suadeat, quod superiorem non habeas et non subsis summo ierarchæ ecclesiasticæ ierarchiæ, nam desipit qui sic sapit, et pertinaciter hoc affirmans, convincitur infidelis, nec est intra boni pastoris ovile."

exercise of ecclesiastical jurisdiction in monasteries of which he claimed to hold the guardianship.[1]

After enumerating other complaints about abuses against which he had made constant remonstrance in vain, he announced that he had therefore summoned the archbishops, bishops, abbots, and some other ecclesiastical persons from France that he might consult with them in November of the following year, and determine what should be done for the amendment of these things, and the good of the kingdom. He invites Philip to send some faithful men who knew him well, to take part in the consultation, but warns him that they will proceed without his representatives if they did not come.[2]

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[1] Id. id. id.: "Nec possumus cum non debeamus, præterire silentio quin ea per quæ oculos Divinæ majestatis offendis, nos perturbas, gravas subditos, ecclesias et ecclesiasticas secularesve personas opprimis et affligas, nec non pares, comites, et barones, aliosque nobiles, et universitates ac populum dicti regni, multisque diversis angustiis scandalisas, tibi apertius exprimamus. Profecto ergo hactenus servasse nos novimus ordinem caritatis. . . . Te, opportunis studiis et temporibus, inducendo, ut errata corrigeris. . . . Sed quod te correxeris, quod in te salutis semina sata, ut vellemus, fructicaverint, non videmus. . . . Et ut aliqua explicabiliter inferamus: ecce quod licet pateat manifeste, ac explorati juris existat, quod in ecclesiasticis dignitatibus, personatibus et beneficiis, canonicatibus et prebendis vacantibus in curia vel extra curiam Romanam, pontifex summam et potiorem obtinet potestatem, ad te tamen hujusmodi ecclesiarum, dignitatum, personatum, beneficiorum, canonicatuum, collatio non potest quomodolibet pertinere nec pertinet. . . . Nihilominus tu, metas et terminos tibi positos irreverenter excedens, et factus impatiens super hoc, injuriose obvias ipsi sedi, ejusque collationes, canonice factas, executioni mandari non sustines, sed impugnas, quamvis tuas, qualitercunque factas, precedere dinoscuntur.

Prelatos insuper et alias personas ecclesiasticas, tam religiosas quam seculares regni tui, etiam super personalibus actionibus, juribus, et immobilibus bonis, quæ a te non tenentur in feudum, ad tuum judicium pertrahis et coarctas, et inquestas fieri facias, et detineri tales, licet in clericos et personas ecclesiasticas nulla sit laicis attributa potestas: præterea contra injuriatores et molestatores prelatorum et personarum ecclesiasticarum eos spirituali gladio qui eis competit uti libere non permittis; nec jurisdictionem eis competentem in monasteriis seu locis ecclesiasticis, quorum recipis guardiam vel custodiam, vel a predecessoribus tuis receptam proponis, pateris exercere; quin potius sententias seu processus, per dictos prelatos ac personas ecclesiasticas licite promulgatos et latos, si tibi non placeant, directe vel indirecte, revocare compellis."

[2] Id. id. id.: "Ecce amore commoti . . . deliberatione cum fratribus nostris super hoc habita pleniore, venerabiles fratres nostros Archie-

These claims of Pope Boniface met with the most violent resistance. The claim of authority was indeed expressed in the bull in sufficiently strong terms, but it was apparently almost immediately represented as being more extreme than it actually was. A spurious form of the bull was produced, in which Boniface VIII. was represented as having claimed that the king was subject to him in temporal as well as spiritual things.[1] Boniface was charged with heresy, in a statement attributed to Pierre Dubois. The author contends that the Pope was endeavouring to take from Philip those rights of supreme jurisdiction and freedom from all other authority in temporal matters which he had possessed for a period of more than a thousand years. If the popes claimed that they had at one time possessed temporal authority over the Kings of France, they had lost them by prescription. He contends also that if the Donation of Constantine had any validity, which he doubts, it could be revoked by the emperor.[2]

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piscopos, episcopos, ac dilectos filios electos et Cisterciensis, Cluniacensis, Premonstratensis, nec non sancti Dyonisii in Francia, Parisiensis diocesis, et majoris Turonensis, ordinis Sancti Benedicti, monasteriorum abbates, et capitula ecclesiarum cathedralium regni tui, ac magistros in theologia et in jure canonico et civili, et nonnullas alias personas ecclesiasticas oriundas de regno predicto, per alias nostras patentes litteras, certo modo ad nostram presentiam evocamus. . . . Cum quibus, sicut cum personis apud te suspicione carentibus, quin potius acceptis et gratis, ac diligentibus nomen tuum, et affectantibus statum prosperum regni tui, tractare consultius et ordinare salubrius valeamus que ad premissorum emendationem, tuamque directionem, quietem atque salutem ac bonum et prosperum regimen ipsius regni videbimus expedire. Si tuam itaque rem agi putaveris, eodem tempore per te vel fideles viros et providos, tuæ conscios voluntatis, ac diligenter instructos, de quibus plene valeas habere fiduciam, hiis poteris interesse, alioquin tuam vel ipsorum absentiam divina replente presentia, in premissis et ea contingentibus ac aliis, prout superna nobis ministraverit gratia et expedire videbitur, procedemus."

Cf. id. id., 4425 and 4426.

[1] Dupuy, 'Histoire du Differend,' &c., 'Preuves,' p. 44 (Deum Time): "Scire te volumus quod in spiritualibus et temporalibus nobis subes. Beneficiorum et prebendarum ad te collatio nulla spectat: et si aliquorum vacantium custodiam habeas, fructus eorum successoribus reserves: et si quæ contulisti, collationem hujusmodi irritam decernimus, et quantum de facto processerit, revocamus. Aliud autem credentes, hereticos reputamus."

[2] Dupuy, 'Histoire du Differend,' 'Preuves' (p. 44), 'Deliberatio magistri Petri de Bosco': "Quod autem Papa sic scribens nitens et intendens, sit et debeat hereticus reputari, per rationes infra scriptas, potest manifeste probari, nisi rescipiscere et suum errorem corrigere palam et publice

In February 1302 Philip summoned what we know as the first meeting of the States General of France, and the terms in which he called them together are very noteworthy. He announces his desire to take counsel with the prelates, barons, and his other loyal subjects on certain difficult matters which concerned the liberty of himself, of the churches, and of all the inhabitants of the kingdom.[1] Unfortunately the proceedings of the meeting of the States General are only known to us in the letters addressed by the clergy to Boniface VIII., and by the nobles to the cardinals, but these are sufficient for our present purpose. They both

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voluerit, et regi Christanissimo ecclesiæ defensori satisfacere super tanta injuria. . . . Nonne Papa concupiscit et rapit, et aufert de novo scienter summam regis libertatem, quæ semper fuit et est nulli subesse et toti regno imperare sine reprehensionis humanæ timore. Præterea negari non potest, quin semper post distincta primo rerum dominia invasio rerum occupatarum aliis maxime per tempus a quo memoria hominum non existit possessarum, et prescriptarum fuerit, est peccatum mortale. Rex autem supremam jurisdictionem et libertatem suorum temporalium ultra mille annos possedit. . . . Præterea Papa non potest supremum dominium regni Franciæ vindicare, nisi quia summus sacerdos est. Sed cont, si esset ita. Hoc beato Petro et singulis ejus successoribus competisset qui in hoc nihil reclamarunt, nihil vindicaverunt? Reges Franciæ hoc possidentes et prescribentes tollerarunt per mille ducentos septuaginta annos. Possessio vero centenaria, etiam sine titulo, hodie per novem constitutionem dicti Papæ sufficeret ad prescribendum contra ipsum et ecclesiam Romanam, ac etiam contra imperium secundum leges imperiales. . . . Et si ecclesia Romana et imperator, subjectionem, si quam habuissent, quod non est verum, per centum annos reges possidere libertatem et prescribere permittendo, totum jus suum amisisset. . . . Præterea si Papa modo statueret prescriptiones sibi non obstare, ergo similiter aliis non obstarent, maxime principibus qui superiores non recognoscunt. Et sic imperator Constantinopolitanus, qui eidem dedit totum patrimonium quod habebat, cum hujus donatio quia nimis magna facta per legitimum administratorem verum imperii, sicut sunt episcopi et alii prelati, non tenuerunt, ut juris civilis doctores, et prescriptio non obstat, secundum ipsum apparet, quod donator vel imperator Alemanniæ loco ejus per Papam subrogatus totam hujusmodi donationem posset revocare."

[1] 'Documents relatifs aux États Generaux . . . sons Philippe le Bel' (ed. G. Picot, Paris, 1901): "I. Philippus . . . super pluribus ardius negociis, nos, statum, libertates nostras, ac regni nostri, necnon ecclesiarum, ecclesiasticarum, nobilium, secularium personarum, ac universorum et singulorum incolarum, regni ejusdem, non mediocriter tangentibus, cum prelatis, baronibus, et aliis nostris et ejusdem regni fidelibus et subjectis, tractare et deliberare volentes."

relate how the king declared to them that in his letter Boniface had claimed that the kingdom of France was held from him, while the King of France had always, in temporal matters, been subject to God only. They were equally disturbed by the fact that Boniface had, as we have seen, summoned the clergy to consult with him at Rome as to the alleged oppression of the clergy and people of France by the king.[1] The clergy implored the Pope to revoke his summons,[2] while the nobles addressed themselves to the cardinals, and requested them to take counsel how these ill-considered and irregular proceedings might be turned to a good end.[3]

It is evident that the real or pretended claim of Boniface VIII. to temporal sovereignty over the King of France was repudiated at once not only by the laity, but by the clergy in France, but it is important to see how their actions and declarations were met in Rome. The cardinals replied to the nobles by positively asserting that the Pope had never written to the king that he was superior to him "temporally," and that the Archdeacon of Narbonne, who had carried the Pope's letter, had made no such statement by word or letter; the statement of Peter Floto to this effect was therefore false.[1]

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[1] Id., V. (Letter of the Clergy): "Idem Dominus Rex proponi fecit cunctis audientibus palam et publice, sibi ex parte vestra fuisse inter alia per predictos Archidiaconum et litteras intimatum, quod de regno suo, quod a Deo solo ipse et predecessores sui tenere hactenus recognitisunt, temporaliter vobis subesse, illudque a vobis tenere deberet."

Id., VI. (Letter of the Nobles): "Premiers entre les autres choses que au dit roi notre sire furent envoyées par messages et par lettres, il est contenu, que du royaume de France, que notre sire li roi et li habitans du royaume ont toujours dit estre soubget en temporalité de Dieu tant seulement, si comme c'est chose notoire à tout le monde, il en devroit estre soubget a luy temporellement et de luy le devoit et doit tenir."

[2] Id., V.: "Hinc in promptu ad Sanctitatis Vestræ providentiæ circumspectam in hoc summæ necessitatis articulo duximus requirendum, flebilibus vocibus et lachrymosis singultibus paternam clementiam implorantes, quod salubre remedium in premissis, per quod . . . status ecclesiæ Gallicanæ in pulcritudine pacis et quietis optate remaneat, prospiciatur nobis, nostrisque statibus, revocando vestræ vocationis edictum."

[3] Id., VI.: "Pourquoy nous vous prions et requerons tant affectueusement, comme nous pouvons que, comme vous soyez establis e appellez en partie au gouvernement de l'Eglise, e chascun de vous en ceste besoigne veillez tel conseil mettre, e tel remede, que ce qui est par si legier e par si desordenné mouvement commancié, soit mis à bon point et à bon estat."

We have also emphatic statements made by the Cardinal of Porto and by Boniface himself in a Consistory held at Rome, presumably in the summer of 1302. The first repudiates the allegation that the Pope had said in his letter that the King of France held his kingdom from the Church, but he sets out a somewhat far-reaching statement about the papal authority. It is obvious, he says, that the Pope judges every temporal matter, if it is related to a question of sin; he admits, indeed, that while spiritual jurisdiction belongs to the Pope, temporal jurisdiction belongs to the emperor and kings; but he adds that one must consider the question of temporal jurisdiction not only from the standpoint of action and custom, but also from that of law. By strict law (de jure) temporal jurisdiction belongs to the supreme Pontiff, the vicar of Christ and of Peter, but as far as its exercise is concerned it does not belong to him, and therefore the King of France has nothing to complain of.[2]

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[1] Id., VII.: "Et volumus vos pro certo tenere quod predictus dominus noster summus pontifex nunquam scripsit regi predicto quod de regno suo sibi subesse temporaliter illudque ab eo tenere deberet; et providus vir, magister Jacobus, archidiaconus Narbonensis, notarius et nuntius domini nostri predicti, sicut constanter affirmat, ipsi domino regi hoc ipsum vel simile nunquam verbaliter nuntiavit, aut scripto, unde propositio quam fecit Petrus Flot, in præsentia dicti domini regis, prelatorum et vestra, et aliorum multorum, arenosum et falsum habuit fundamentum, et ideo necesse est quod cadat edificium, quod edificabitur super illud."

[2] 'Histoire du Differend,' 'Preuves' (p. 75): "Referunt aliqui quod continebatur in illa lettera, quod dominus rex deberet recognoscere se tenere regnum suum ab ecclesia, propter Deum. Cesset murmur quia nunquam fuit scriptum in illa littera, vel mandatum ex parte summi pontificis, et fratrum, quod deberet recognoscere se tenere regnum suum ab aliquo, et credo illum qui fuit missus talem virum qui non excessit fines mandati sibi commissi. . . . (Page 76.) Item planum est quod nullus debet vocare in dubium quin posset judicare (Papa) de omni temporali, ratione peccati. . . . Sunt enim duæ jurisdictiones, spiritualis, et temporalis: jurisdictionem spiritualem principaliter habet summus pontifex, et illa fuit tradita a Christo, Petro, et summis Pontrificibus successoribus ejus: jurisdictionem temporalem habent imperator et alii reges; tamen de omni temporali habet cognoscere summus pontifex et judicare ratione peccati; unde dico quod jurisdictio temporalis potest considerari prout competit alicui ratione actus

Boniface VIII., after a violent invective against Peter Floto, denounced his falsification or perversion of the letter which he had written to the king, and his assertion that Boniface had bidden the king to acknowledge that he held his kingdom from him. Forty years, he said, he had been learned in the law, and knew very well that there were two powers established by God; he had no intention to usurp the jurisdiction of the king, but the king must admit that he and all other Christian men were subject to him in any matter where sin was concerned.[1]

It would then seem to be plain that whatever may have been Boniface's real intention, and whatever he may have meant in the Bull, "Asculta Fili," its actual result had been that the whole French people as represented in the States General, clergy, nobles, and commons, had emphatically repudiated the notion that the Pope possessed any temporal authority in France, and the cardinals positively asserted that the Pope had made no such claim. The Cardinal of Porto and Boniface seem to concur, but it was significant that the former maintained that the Pope did hold temporal as well as spiritual authority, "de jure," and that Boniface maintained that all matters which were related to any question of sin were under his jurisdiction.

Boniface had not yet said his last word, and in the Bull

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et usus, vel prout competit alicui de jure, unde jurisdictio temporalis competit summo pontifici qui est vicarius Christi et Petri de jure. . . . Sed jurisdictio temporalis, quantum ad usum, et quantum ad executionem actus non competit ei. . . . Unde videtur modo quod Dominus rex Francorum non habet materiam conquerendi."

[1] Id. id. (p. 77): "Iste Petrus (Floto) litteram nostram quam de consensu, et consilio fratrum nostrorum, non repentina, sed repetita deliberatione totius collegii: et ex conventione et convento habito cum nunciis regiis non (nos ?) miseramus ei, ex eo quod dixerant nobis prius scribatur, sed hoc regi falsavit; seu falsa de ea confixit, quia nescimus bene an litteram falsaverit, nam litteræ predictæ fuerunt celatæ baronibus et prelatis; imposuit nobis quod nos mandaveramus regi, quod recognosceret regnum a nobis. Quadraginta anni sunt quod nos sumus experti in jure et scimus quod due sunt potestates ordinatæ a Deo. Quis ergo debet credere, vel potest, quod tanta fatuitas, tanta insipientia sit vel fuerit in capite nostro ? Diximus quod in nullo volumus usurpare jurisdictionem regis, et sic frater noster Portuensis dixit. Non potest negare rex seu quicunque alter fidelis, quin sit nobis subjectus ratione peccati."

"Unam Sanctam," issued in November 1302, he set out the relations of the spiritual and temporal powers in more explicit terms than in the Bull "Asculta Fili."

He begins by describing the unity of the Church, and maintains that there is only one Head of the Church—that is, Christ—and the vicar of Christ—that is, Peter and his successors: those who, like the Greeks, say that they are not under Peter, are not Christ's sheep. There are two swords, the spiritual and the temporal, but these are both in the power of St Peter and the Church, the one to be used by the priest, the other by the king, but at the command ("ad nutum") of the priest, for the one sword must be under the other, and the temporal authority must be subject to the spiritual (spirituali subjici potestati). The spiritual power is superior in dignity to the temporal, and it has therefore authority to "institute" the temporal, and to judge it if it is not good, and thus is fulfilled the prophecy of Jeremiah: "Behold, I set thee to-day over nations and kingdoms." Therefore, if the earthly power goes astray, it is judged by the spiritual, but the spiritual can only be judged by God, and not by man. This authority, that is, of the Pope, although it is given to a man, and exercised by a man, is a divine authority; he that resists it, resists the ordinance of God; it is necessary to salvation to be subject to the Roman Pontiff.[1]

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[1] Boniface VIII. Registrum, 5382 ("Unam Sanctam"): "Igitur ecclesiæ unius et unicæ, unum corpus, unum caput, non duo capita quasi monstrum, Christus scilicet, et Christi Vicarius Petrus, Petrique successor, dicente Domino ipsi Petro, 'Pasce oves meas'; meas, inquit, et generaliter, non singulariter has vel illas, per quod commisisse sibi intelligitur universas. Sive ergo Græci sive alii, se dicant Petro, eisque successoribus, non esse commissos, fateantur necesse est se de ovibus Christi non esse, dicente Domino in Johanne, unum ovile, unum et unicum esse Pastorem. In hac ejusque potestate duos esse gladios, spiritualem videlicet et temporalem, Evangelicis dictis instruimur. Nam dicentibus apostolis 'ecce gladii duo hic,' in ecclesia scilicet, quum apostoli loquerentur, non respondit Dominus nimis esse, sed satis. Certe qui in potestate Petri temporalem gladium esse negat, male verbum attendit proferentis, 'converte gladium tuum in vaginam.' Uterque ergo in potestate ecclesiæ, spiritualis scilicet gladius et materialis, sed is quidem pro ecclesia, ille vero ab ecclesia exercendus, ille sacerdotis, is manu regum et militum, sed ad nutum et patientiam sacerdotis.

What was then the actual position of Boniface VIII. as it is represented in the Bulls "Asculta Fili" and "Unam Sanctam"? The answer is not quite easy. If we compare his language with that of the Canonists, which we have considered in a previous chapter, it may at first sight seem to be the same; he maintains that both swords belong to the spiritual power, and that the spiritual power both instituted and can judge it, and in the Bull "Asculta Fili" he asserts that he is the "Superior" of the King of France. These phrases are capable of being interpreted as implying the same principles of those of Hostiensis, but they do not necessarily do this. His language is at least much more guarded than that of the extreme papalist tracts which we are about to examine, and that of Ptolemy of Lucca with which we have already dealt.

Oportet autem gladium esse sub gladio, et temporalem auctoritatem spirituali subjici potestati. Nam quum dicat apostolus, 'non est potestas nisi a Deo, quæ autem a Deo sunt, ordinata sunt,' non ordinata essent nisi gladius esset sub gladio, et tanquam inferior reduceretur per alium in suprema. Nam secundum beatum Dionysium, lex divinitatis est, infima per media in suprema reduci. Non ergo secundum ordinem universi, omnia æque ac immediate, sed infima per media, inferiora per superiora, ad ordinem reducuntur.

Spiritualem autem, et dignitate, et nobilitate, terrenam quamlibet precellere potestatem oportet tanto clarius nos fateri, quanto spiritualia temporalia antecellunt: quod etiam ex decimarum datione, et benedictione, et sanctificatione, ex ipsius potestatis acceptione, ex ipsarum rerum gubernatione claris oculis intuemur. Nam veritate testante, spiritualis potestas terrenam potestatem instituere habet, et judicare si bona non fuerit. Sic de ecclesia, et ecclesiastica potestate, verificatur vaticinium Jeremie, 'Ecce constitui te hodie, super gentes et regna,' et cetera quæ sequuntur. Ergo si deviat terrena potestas, judicabitur a potestate spirituali, sed si deviat spiritualis minor, a suo superiore. Si vero suprema, a solo Deo, non ab homine potest judicari, testante apostolo, 'spiritualis homo judicat omnia, ipse autem a nenime judicatur.'

Est autem hic auctoritas, etsi data sit homini et exercetur per hominem, non humana, sed potius divina potestas, ore divina Petro data, sibique, suisque successoribus in ipso Christo, quem confessus fuit petra firmata, dicente domine ipsi Petro, 'Quodcunque ligaveris,' &c.

Quicunque igitur huic potestati a Deo sic ordinate resistit, Dei ordinationi resistit, nisi duo, sicut maniceus fingat esse principia, quod falsum et hereticum judicamus. Quia testante Moyse, non in principiis sed in principio, cœlum Deus creavit et terram. Porro subesse Romano pontifici, omni humane creature declaramus, dicimus, et diffinimus omnino esse de necesitate salutis."

CHAPTER IX.

BONIFACE VII. AND PHILIP THE FAIR. "CONTROVERSIAL LITERATURE, I."

THE conflict between Philip and Boniface produced a significant pamphlet literature, both in support and in criticism of Boniface's position, and it is in these pamphlets that we have the most highly developed statement of the extreme papal position, and the most explicit repudiation of that position.

The first work which we must examine is a fragment of an anonymous pamphlet printed by Dr R. Scholz. This work may, indeed, belong to an earlier date—to the years 1296-7,—for it refers more than once to the dispute about the taxation of the clergy and the Bull "Clericis Laicos." If, however, this was the time and occasion of the tract, it discusses the principles of the relations of the Temporal and Spiritual Powers under terms which anticipate the conflict of 1302. The authorship is unknown, but Dr Scholz is inclined to think that it may be by Henry of Cremona, with whose work, 'De Potestate Papæ,' we shall presently deal.

The writer asserts that it was heresy to say that papal constitutions with regard to temporal possessions in the various kingdoms and other States had no authority over the laity, for Jesus Christ, even as man, possessed the fulness of power in temporal and spiritual things, and He committed the fulness of power to Peter, whom he established as head of the Church militant. The Roman Pontiff is the vicar of God, and has authority over kings and kingdoms; he transferred the empire from the Greeks to the Germans, he deposed the king of the Franks and the Emperor Frederick II. To say that the Pope has not the fulness of power in spiritual and temporal things would be to resist the divine ordinance; there are, indeed, divers orders and powers, ecclesiastical and secular, but in the last resort it is the supreme Pontiff in whom they are all united. To speak of two heads of the one body of Christ is to speak of a monster.[1]

These passages represent the main argument of the tract in the clearest way, but it receives an additional significance when we observe that the author finds himself compelled to attempt to explain away the Gelasian principle of the two powers. Secular princes, he contends, should not imagine that, because it had been written that Christ separated the functions (officia) of the two powers, the Pope had not both powers. For what was written was that the functions were distinct, not that the powers were divided, for both the powers reside in the Pope, who has authority over the temporal as well as the spiritual sword, although the actual use of the temporal sword belongs to the secular prince. Or alternately it might be argued that this distinction was true of other prelates, but not of the Pope.[1]

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[1] Anon. Fragment in R. Scholz, 'Publizistik zur Zeit Philipps des Schönen,' &c., p. 471. "Non ponunt laici os in cœlum dicendo seu blasphemando, quod Papales constitutiones, editi super temporalibus bonis seu rebus quæ consistunt infra regna, ducatus, comitatus, vel territoria ipsorum laicorum, ipsos laicos non astringunt. Nam hoc asserere et tenere esset hereticum et a fide orthodoxa alienum.

Constat enim quod Dominus Jesus Christus etiam tamquam homo habuit plenitudinem potestatis in temporalibus et spiritualibus, qui dicit post assumptam humanitatem: 'Data est mihi omnis potestas in cœlo et in terra,' Matt. ultimo; qui omne ponit nihil excipit. . . . Item constat quod idem Dominus Jesus Christus beato apostolo, quem constituit caput ecclesiæ militanti, ut 24, Q. i. rogamus (Gratian, Decretum, C. ii. 1, 15), commisit plenitudinem potestatis, dixit enim, scilicet Matt. xvi. 'Quodcunque ligaveris super terram, erit ligatum in cœlis,' dicendo 'Quodcunque' omnia comprehendit, tam spiritualia quam temporalia. . . . Ipse enim solus habet potestatem ligandi atque solvendi, ut dictum est. Probatur enim auctoritate canonum a sanctis patribus divinitus editorum, xxi. Q. ii. S. Unde dicit Nicolaus Papa quod Christus Dei filius beato Petro eterno clavigero terreni simul et cœlistis imperii jura commisit, xxii. Dist. omnes (Gratian, Dec., xxii. i.); et similem potestatem voluit transire ad quemlibet ejus successorem ut probatur xxi. Dist. in novo (Gratian, Dec., D. xxi. 2), unde dicit Papa se locum Dei tenere in terris. . . . Item Romanus Pontifex est Dei Vicarius, ut extra. qui filii sint legit: c. Per Venerabilem (Decretals, iv. 17, 13), et constitutione Innocentii IV. De sent: et re judic: ad apostolice (Decretals, vi. 2, 14, 2).

Unde Papa potestatem habet supra gentes et regna, Ezech. i. Transtulit enim imperium a Græcis in Germanos . . . item . . . Zacharias Ludovicum Regem Franciæ . . . privavit regno . . . Innocentius IV. Federicum Imperatorem privavit imperio. . . . Christus enim . . . voluit dimittere loco sui vicarium scilicet beatum Petrum et quemlibet ejus successorem qui in omnibus quæ opportuna erant ad universale mundi regimen, haberet plenitudinem potestatis. . . . Item dicere quod papa non habet plenitudinem potestatis in spiritualibus et temporalibus, esset resistere divinæ ordinationi. . . . Nam sunt diversi ordines et diversi potestates ecclesiasticæ et seculares, et ultimo est summus Pontifex, in quo omnes potestates aggregantur et ad quem reducuntur. . . . Item credendum est, quod Christus, qui est caput corporis ecclesiæ . . . voluerit esse caput corpori ecclesiæ unum caput loco sui in isto corpore, scilicet beatum Petrum et ejus quemlibet successorem, et non duo capita, quod monstrum esset unum corpus habere duo capita."

He goes on to argue that, even if it were true that the two powers were different and distinct, that would not mean that they were equal; the temporal would be under the spiritual, otherwise the order of the universe and of the ecclesiastical monarchy and of the divine wisdom would be destroyed. It is in virtue of this superiority that the Pope frequently judges the temporal matters of emperors and kings during a vacancy, or when they have committed some grave fault for which they ought to be deprived of the empire or kingdom, or some other fault.[2]

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[1] Id. id., p. 476. "Item non superbiant principes seculares de hoc, quod legitur, quod Christus, mediator Dei et hominum, officia utriusque potestatis, scilicet sacerdotalis et imperialis, discernit, et sic videtur quod Papa non habet utramque potestatem, ut 96 Dist. quum ad verum (Gratian, Decret., D. 96, 6) et Dist. x. quoniam idem (Gratian, Decret., D. x. 8). Nam signanter dicit officia distincta, non potestates diversas, quia utraque consumpta est et residet in Papa, qui habet potestatem utriusque gladii, spiritualis et temporalis, licet exercitium temporalis gladii competit principi seculari. Vel posset dici, quod distinctio habet locum quantum ad alios pontifices, non quantum ad Papam. Et quod Papa habeat jus potestatis et etiam hujus gladii temporalis patet: nam, quantumcunque videatur pro defensione fidei et libertate ecclesiæ, indicit bella et dat laicis potestatem exercendi hujusmodi gladium contra hostes fidei et ecclesiæ, et occupandi bona eorum, xxiv. Q. ult. c. igitur (Gratian, Decret., C. 8, 7) et predicta extra de homicidia constituta in Ca. pro humanis (Decretals, vi. 5, 4, 1) et extra de voto et voti redemptione, quod super hiis" (Decretals, iii. 34, 8).

[2] Id. id., p. 478. "Item dato quod ipsæ potestates diversæ fuissent et distinctæ, non tamen tali modo, ut essent equales, sed quod una, scilicet temporalis, esset sub altera, scilicet spiritualis, quæ est exterior et aliam

He then deals with the subject of the authority of the Pope over the temporalities of the Church, and contends that the Bull "Clericis Laicos" was lawfully promulgated, for whatever is given to God is holy of holies to Him. It is mere blasphemy to say that the Bull was unjust or unrighteous.[1] It is interesting, however, to observe that even this writer admits that the laity have the right to demand contributions and services from the clergy with respect to the property and churches which they held by feudal tenure.[2]

The whole contention of the treatise is summed up when he says that the laity, who say that the Pope has no authority over temporal matters, should be afraid lest they fall into heresy. It is nothing less than sacrilege to dispute the judgment or constitution of the supreme Pontiff, for he is the vicar of God.[3]

The position of the writer is clear and dogmatic; all power, both temporal and spiritual, belongs to the Pope, who is the real monarch of the world. It is the position of Ptolemy of Lucca. How far in the part of the work which has been lost he developed his argument upon the same lines as Ptolemy,

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excedit, sicut sol lunam, extra de major. et ob. solite (Decretals, i. 33, 6), 96 Dist. duo (Gratian, D. 96, 10), alioquin turbaretur rectus ordo universi et maxime ecclesiasticæ monarchiæ, et divinæ sapienciæ, et ordo nacionum derogaretur, ut supra dictum est. Et ratione superioritatis hujus Papa plerumque judicat de temporalibus imperatorum et principum secularium, scilicet vacantibus imperio et regnis sive principatibus: item quum delinquit, vel alia causa iubeat, quare debeat privari imperio seu regno, seu principatu, vel alias delinquit."

[1] Id. id., p. 478. "Dicere quod Papa in rebus temporalibus ecclesiarum potestatem non habet, tamen nulli liceat negare quin omne quod Domino offertur, sive fuerit homo, sive animal, sive ager vel quicquit, sanctum sanctorum erit domino et ad jus pertinet sacerdotis . . . unde non est dubium, quod constitutio quæ incipit, Clericis Laicos etc. edita pro conservanda libertate ecclesie sponse, et licite et divino quodam motu fuerit promulgata. . . . Taceant qui blasphemant dictam constitutionem sancti patris Bonifacii VIII 'Clericis laicos' injustam vel iniquam."

[2] Id. id., 480. "Item laici possunt a personis ecclesiasticis exigere tributa et servicia ratione rerum et ecclesiarum quæ tenentur ab ipsis in feodum."

[3] Id. id., p. 479. "Timeant ergo laici, qui dicunt Papam nullam habere super temporalibus potestatem, ne crimine hereseos notentur. . . . Item crimen sacrilegii se involvent disputando de judicio vel constitutione pontificis, scilicet, Dei vicarii, vel eam revolvendo seu ei contradicendo."

we cannot say; as we shall see at once, this was done by Henry of Cremona.

One of the most important pamphlets of this time on the extreme papal side is a work of Henry of Cremona, entitled 'De Potestate Papæ.'[1] The purpose of his work, says the writer, was to correct the error of those who denied that the Pope had jurisdiction in all the world in temporal matters. Many had dealt with the matter, but especially in these days Pope Boniface VIII., whose lawful action and words had been complained of by some.[2]

He then sets out the evidence of Holy Scripture. After giving an account of the rule of the Patriarchs and of David, he says that till the coming of Christ the government was in the hands of the priests, or of kings instituted by them. Christ Himself was both king and priest, and he cites various passages from the Psalms and the New Testament in proof of this. After His resurrection Christ declared that all power was given to Him in heaven and earth, and it was this power which He gave to His vicar Peter. Christ was therefore Lord in temporal things, and gave His lordship to Peter and his successors, and the Pope is therefore lord in all things.[3]

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[1] For some account of Henry of Cremona, and a discussion of the date of the work, cf. Scholz, 'Die Publizistik zur Zeit Philipps des Schönen,' &c.

[2] Henry of Cremona, 'De Potestate Papæ,' p. 459. "Sed quia aliqui sciunt et inebriantur vino, ut non intelligant 37 Dist. c. uno (Gratian, Decretum, D. 39, 1) quia circa dignitatem papalem et potestatem quidem os ponentes in cœlum quædam falsa et sophistica notaverunt digni lapidatione, sicut bestiæ montem tangentes, Exod. xix.; dicentes Papam non habere jurisdictionem in temporalibus per totum mundum. Necesse ergo videtur tali errori obviare, et veritatem clare ponere, et licet multi bona dixerunt, ut Tit. qui filii sunt legitimi c. causam quæ (Decretals, iv. 17, 7) et Innocentius III. de foro comp. c. licet (Decretals, ii. 2, 10), et de voto et voti redemptione c. super hiis (Decretals, iii. 34, 8), quia tamen ipsi doctores habuerunt multa dicere, non potuerunt super hiis insistere, nec curaverunt, quia non fuit qui opponeret. Sed diebus nostris a Deo missus est, nolens et bene gloriam et honorem suam alteri dare, Ysaye 48, scilicet dominus Boniffacius, Papa VIII. faciens et dicens sibi licita, propter quæ quidam indigne tulerunt bonum opus, sicut malum habentes stomachum et inde murmuraverunt . . . et audeo dicere, quod dicentes et credentes contra veritatem quam dicam, mala de fide sentiant."

[3] Id. id., 462. "Et ita usque ad adventum Christi regnaverunt (vel sacerdotes vel reges per eos instituti)

This may also be established in another way. It is confessed by all men that the Pope has authority over all souls, but the body is under the soul, and therefore under the power of the Pope.[1]

After this sweeping assertion of a universal supremacy, it seems almost an anti-climax that he should maintain that the Pope had supreme authority over the empire. He alleges in proof of this the fact that the Pope transferred his empire from the Greeks to the Germans, that it was the Pope who had deposed the king of the Franks and the Emperor Frederick, and that the person elected to the empire could not administer

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. . . Christus fuit rex et sacerdos, ut in psalmo et in nocturno v. ferie: ('Deus judicium tuum regi da et justitiam tuam filio regis'). De regno hoc dicitur; de sacerdotio hoc dicitur in vesperis: 'Tu es sacerdos secundum ordinem Melchisedek' . . . Et ibidem dicitur in Luc. 'Quod habebat Christum regnum patris sui David et quod regni ejus non erit finis,' et ipse etiam usus est gladio utroque, Johannes II. ubi ejecit ementes et vendentes de templo et nullus ei ausus dicere quicquid, quasi quod esset Dominus et talia posset. Et apud eum fuerunt duo gladii, Luc. 22. . . . Et post resurrectionem Matt. ultimo cap: dixit Jesus verbum propositum: 'Data est mihi omnis potestas in cœlo et in terra.' Et istam potestatem ante mortem promisit vicario suo Petro Matt. xvi. quum dixit, 'Tibi dabo claves regni cœlorum et quodcunque ligaveris super terram, erit legatum et in cœlum, et quodcunque solveris super terram erit solutum et in cœlis.' xxiv. Q. i. Quodcunque (Gratian, Decretum, C. xxiv. 9, 1, 6). Et istam promissionem adimplevit dominus post resurrectionem quando Joh. xx. dixit Petro. 'Simon Johannes, diligis me plus hiis etc. pasce oves meas.' . . . Et III.° 'Simon, Amas me, pasce oves meas.' de elect. significasti (Decretals, i. 6, 4) et qui dixit quæcunque et oves meas, nihil excipit, xix. Dist. si Romanorum (Gratian, D. xix. 1) et de major. et Obed. cap. solite (Decretals, i. 33, 6). Et qui vult ab ista regula esse exceptus et non vult esse ovis Domini, ut non subsit Petro, est hereticus. Et Canon dicit xxii. Dist. Cap. Primo (Gratian, Dec., D. xxii. 1) quod Dominus Petro commisit claves cœlestis et terreni imperii, et illam potestatem quam habuit Petrus habet quilibet Papa, de translat. Cap. i. Cap. ii. et permittimus (Decretals, i. 7, 1, 2, 3) et de majo. et obed. c. solite (Decretals, i. 33, 6) qui filii sunt legit per venerabilem (Decret., iv. 17, 13) et II. de judiciis c. novit (Decret., ii. 1, 13); et ita Christus fuit dominus in temporalibus et eorum dominium habuit, et quod habuit Petro tradidit xxii. Dist. c. 1 (Gratian, Dec., D. xxii. 1), et per consequeus successoribus ut supra probatum est, et ita Papa in omnibus dominatur."

[1] Id. id. id. "Hoc eciam probatur alia ratione. Papa super animas potestatem recepit (Matt. xvi. and John xix.), hoc omnes confitentur. . . . Sed corpus est animæ et sub potestate Papæ: ergo de primo ad ultimum omnia sunt sub potestate ejus et animæ sunt sub potestate Papæ, qui est successor Petri et vicarius Jesu Christi."

the goods of the empire without the papal confirmation. He maintains that the Church had authority to deal with all causes.[1]

He then returns to the general question, and restates his first position in more detail. It is maintained, he says, that the "Imperium" came from God as well as the "Sacerdotium," and he admits that this is true, but they come from God not divided but united. And if it were urged that the "Imperium" existed before the "Sacerdotium," this he says was false, for the "Sacerdotium" did not begin with Peter; the Levitical "Sacerdotium," which was ordained by God, was transferred to him. Again, if it were maintained that the Church had no such temporal authority before Constantine, this was untrue. It was only because the Church lacked power, not right, that it did not exercise the authority, and therefore God inspired Constantine to confess that he held his power from the Church, and to surrender it to the Church. If the emperors had any lawful rights, they had lost them by their sins, especially in slaying the faithful. Henry of Cremona was compelled to endeavour to explain away the Gelasian principle of the two independent authorities in the world, and especially the admission by the Popes that they had no intention of interfering with the temporal jurisdiction of others. He argues that these things were said out of the humility of their minds, or that the Church did not wish to recall the authority it had conferred upon others; the popes did not mean that they could not do so. He concludes with the assertion that the laws which were made by the emperor were made by him under the authority of the Church, and could be corrected and annulled by the Church.[1]

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[1] Id. id., p. 465. "Et quod Papa habeat dominium super imperium probatur hoc modo. . . . Transtulit potestatem et auctoritatem eligendi imperatorem a Græcis in Germanos. . . . Si ergo non haberet potestatem seu dominium imperii, ecclesia non potuisset transferre quod non data haberetur, de jure patet, quod autem nec aliqui qui postea fuerunt electi fuissent veri imperatores .xv. Q. vi. C. Arius (Gratian, Dec., C. 15, 6, 3) etiam continetur, quod Papa deposuit quemdam regem Francorum; dominus etiam Innocentius IV. deposuit Fredericum, De sent et re judic: C. ad Apostolice in sexto libro (Decretals, vi. ii. 14, 2); et habetur etiam servatum de facto, quod nullus electus in imperatorem administrat bona imperii sine confirmacione Papæ, et nullus dubitat, ipsum majorem qui confirmat, et illum minorem esse qui confirmatur, de elect. cap. venerabilibus (Decretals, i. vi. 24); et etiam ecclesia consuevit cognoscere de omnibus causis, et secundum i. Ad Corinth; vi., et xi. Q. i. C. placuit (Gratian, Dec., C. xi. 1, 43), et nota xi. Q. v. si quis presbyter (Gratian, Dec., C. c. xi. 1, 3, 5), et xi. Q. i. c. relatum (Gratian, Dec., C. xi. 1, 14), ubi Papa scribit omnibus orthodoxis et dicit reprehendendo, quod quidam dixerunt, inobedientes preceptorum Dei, quod ecclesia non habet cognitionem omnium causarum."

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[1] Id. id., p. 466. "Sed contra hec supradicta multa opponuntur, et primo, quia imperium a deo processit sicut et sacerdotium ut in autentica, quomodo oporteat episcopus in principio Collat. prima (Novels vi.). . . . Et ergo respondeo quod est verum et hoc supra in principio probatum est, quod a Deo processerunt istæ duæ jurisdictiones, sed non divisim, sed conjunctim. Sed replicatur hoc non potest esse quia ante fuit imperium quam sacerdotium, et hoc est falsum ut probatum est supra, quia non incepit sacerdotium in Petro, ymmo Sacerdotium Leviticum, quod ordinatum est a Deo, in eo translatum est: de constituti III. c. Augustinus (?) . . . . Præterea opponunt juriste; talia non fiebant ante Constantinum, et Constantinus primo dotavit ecclesiam quæ ante nil habebat. Sed quod ecclesia ante non faciebat talia, non erat defectum juris sed potenciæ. . . . Et ideo Dominus voluit fidei subvenire, et hoc (aliter) bene fieri non poterat, humano more loquor, nisi potestatem ecclesiæ dando. Quare inspiravit Constantinum, ut renunciaret imperio et confiteretur se ab ecclesia illud tenere; nec tunc, ut quidam dicunt, fuit dotata primo de jure, sed de facto, sicut satis manifestum est quod imperator ecclesiæ dare non potest licenciam habendi proprium, nec etiam potuit bona imperium alienare. . . . Si imperatores aliquod jus habebant, propter peccata quæ commiserunt, occidentes fideles in Christo, maxime summas pontifices, divinitus illo jure privati fuerunt. . . Opponitur eciam, quod dominus dicit de tributo solvendo Cæsari. . . . Dicitur eciam, Papa nunquam exercuit istam utramque potestatem seu juris dictionem. Sed hoc non fuit propter deesse potenciæ, sed propter dignitatem ejus, et vilitatem jurisdictionis temporalis, cui commixta est sanguinis effusio, quæ clericis interdicta est in illo verbo: 'Quia vir sanguinis es, non edificavis mihi templum,' primo Paralip. xxii., et ad hoc designandum dominus dixit Petro, ut converteret gladium in vaginam, Matt. xxvi.

Dicunt etiam opponentes: fecit Deus duo luminaria magna, solem et lunam, sicut ergo sunt duo et divisa, ita sunt duæ jurisdictiones. . . . Sed luna non lucet, nisi quantum sol respicit eam, ergo nec imperator habet potestatem, nisi quantam dat ei Papa.

Hoc eciam est de necessitate naturæ, scilicet quod Papa sit solus dominus universalis in toto mundo, quia omnes fideles sunt una ecclesia . . . et omnes sumus unum corpus, ad Cor. xii., Ad. Coloss. i., et ecclesiæ quæ est unum corpus, Christus est caput, Ad Ephes. i. 5. . . . Si ergo sumus unum corpus et Christus est unum caput nostrum, non est indigens habere plura capita, quia Papa est loco Christi, de translat. C. penultimo (Decretals, i. 7, 4), et monstrum esset videre corpus cum duis capitibus de Off. Jud. Ord. C. quoniam in plerisque (Decret., i. 31, 14). . . . Opponitur de Papa quod ipse non habebat utramque jurisdictionem, quia ipsemet dicit in pluribus locis: 96 Dist. cum ad verum ventum est, etiam si Imperator (Gratian, Dec., D. 96, 6 and 11) et 33, 9, 2, C. inter (Gratian, Dec., C. 33, 2, 6) et de judic C. novit; de foro compet. licet; et

It is clear that Henry of Cremona is asserting, only with greater fulness, the principles represented by the anonymous pamphlet which we have before considered, and a comparison between his work and that of Ptolemy of Lucca shows that he is substantially, and even in detail, in agreement with him.[1] These writers are clear and emphatic in asserting that all authority, the temporal just as much as the spiritual, belonged to the Pope ; that it was in the hands of the secular rulers just in so far as the Pope entrusted it to them, and that it could at any time for sufficient reason be resumed.

Another of the most important political treatises of the time is the 'De Ecclesiastica Potestate,' written by that Egidius Colonna to whose work, 'De Regimine Principum,' we have frequently referred in the earlier part of this volume. The 'De Regimine Principum' was written before 1285, while the treatise, 'De Ecclesiastica Potestate,' as is suggested by Dr Scholz, was written in 1301, about the same time as Boniface VIII.'s Bull, "Ausculta Fili," and therefore before the Bull "Unam Sanctam." [2] Some twenty years had elapsed, and it is therefore intelligible that the standpoint of the author might have considerably changed. It must, however,

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de appell. si duobus (Decretals, ii. 1, 13 ; ii. 2, 10 ; and ii. 28, 7), in quibus dicitur quod non vult se intromittere de jurisdictione temporali aliorum. 8. Dist. quo jure (Gratian, Dec., D. 8, 1). Sed responditur ut supra, quod causa humilitatis hoc dicit vel quia non decet sine causa revocare, quod fecit ecclesia, scilicet assumere potestatem alii commissam ; sicut eciam Papa dicit quod non vult honorem sibi fieri qui debetur aliis episcopis, quia sic confunditur ordo ecclesiasticus, 99 Dist. C. ultimo (Gratian, Dec., D. 99, 5) et ii. Q. 1 pervenit (?) Non tamen dicitur, quod non possit. Sic et hic in C. quo jure (Gratian, Dec., D. viii. 1) est verum quod jus humanum ab imperatoribus est institutum et ipsi statuerunt aliqua circa temporalia, sed talia statuta auctoritate ecclesiæ statuerunt, et ideo non sunt adeo firma, quin per ecclesiam possint corrigi et emendari, sicut constitutiones episcoporum, sicut de multis legibus factum est, sicut de illis quæ permittunt concubinatum, et usuras, et qui prohibent matrimonium ante annum luctus, de seris nuptiis, c. ult. et penult., et de aliis ut notatur x. Dist. lege" (Gratian, Dec., D. 10, 1).

[1] Cf. pp. 342-348.

[2] We use the text published by Oxilio and Boffito in 1908, and are glad to express our great obligation to these scholars for making the text of one of the MSS., in which the work exists, accessible to students. We must again express our great obligation to Dr Richard Scholz for his careful and illuminating critical discussion of the work in his 'Publizistik zur Zeit Philipps des Schönen und Bonifaz VIII.'

be confessed that the development is arresting, and even startling. The earlier work is significant especially, not merely for its reproduction of much in Aristotle's politics, especially the principle that the State is a natural institution, but also for its abnormal assertion of the principle that the monarch should be above the law. The later work is almost wholly occupied with the superiority of the Spiritual over the Temporal Power, in terms which are not only extreme, but even in some respects contradict the judgment of the most important ecclesiastical writers.

The spiritual power, Egidius says, establishes and judges the temporal, and there can be no true order unless the temporal sword is under the authority of the spiritual. Those who suggest that the secular authorities are under the authority of the Church only in spiritual, and not in temporal, matters are in error. For if this were the case, if the temporal sword were not under the spiritual, there would be no true order. The vicar of Christ must, therefore, be held to possess lordship (dominium) in temporal matters.[1] In another place Egidius expresses the same principle in slightly different terms. The Church holds both swords, princes possess only the use or exercise of the material sword, and are "sub famulatu et obsequio" of the Church.[2] Again, to the spiritual sword has been given all power in heaven and earth; the Church has both swords, Peter has the keys of the earthly as well as of the heavenly kingdom, the ecclesiastical power can do whatever the earthly power can do, there is no power in the material sword which is not in the spiritual.[1] These are sufficiently drastic statements of the principle that all temporal as well as spiritual authority belongs to the Church. Egidius, however, sets out a much more extreme contention than this. If, he says, it is argued that not every royal power is instituted by the priest, he would reply that such an authority is not a rightful authority, such a kingdom is little better than a band of robbers.[2] The material sword, he says in another place, has its power from the supreme Pontiff, for all power in the Church militant is derived from him, no one can justly hold any power or be justly lord of anything except by means of the Church—that is, unless he has been spiritually regenerated and sacramentally absolved by the Church.[3]

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[1] Egidius Colonna, 'De Ecclesiastica Potestate,' i. 3, p. 12. "Nam ut patuit per Hugonem (de Sancto Victore) spiritualis potestas habet potestatem terrenam instituere, et habet de ea utrum bonum sit judicare; quod non esset, nisi posset eam plantare et evellere. . . . Sic autem oportet hæc ordinata esse . . . non essent autem ordinata nisi unus gladius reduceretur per alterum, et nisi unus esset sub alio . . . sed diceret aliquis, quod reges et principes debent esse subjecti spiritualiter, non temporaliter, ut secundum hoc sit intelligendum quod dictum est quod reges et principes spiritualiter, non temporaliter, subsint Ecclesiæ. Sed temporalia ipsa, diceret aliquis, Ecclesia recognoscit ex dominio temporali, ut patuit ex donatione et collatione quam fecit Ecclesiæ Constantinus. Sed sic dicentes vim argumenti non capiunt. Nam, si solum spiritualiter reges et principes subessent Ecclesiæ non esset gladius sub gladio, non essent temporalia sub spiritualibus, non esset ordo in potestatibus, non reducerentur infima in suprema per media. Si igitur hæc ordinata sunt, oportet gladium temporalem sub spirituali, oportet Christi vicarium super ipsis temporalibus habere dominium."

[2] Id. id., ii. 5, p. 47. "Sic et Ecclesia utrumque gladium habet, quod non esset, nisi terreni principes habentes usum materialis gladii et habentes judicium sanguinis essent sub famulatu et obsequio ecclesiasticæ potestatis." Cf. i. 7.

Here is, indeed, a doctrine of an almost revolutionary nature, difficult to reconcile with Egidius' own conception of the State as set out in his 'De Regimine Principum,' and in flat contradiction to the doctrine both of St Thomas Aquinas and of Innocent IV. We have set out their principles on this question in the first part of this volume, and we need only here remind ourselves that Innocent IV. asserted that lordship, possessions, and jurisdictions are lawful and blameless among the unbelievers, and therefore neither the Pope nor other Christian men have any right to destroy them. St Thomas Aquinas maintained that dominion and "prælatio" were created by human law, while the distinction between believers and unbelievers belongs to the divine law, and therefore the divine law, which is of grace, does not destroy the human laws, which arise from natural reason.[1] Egidius himself in his earlier work had maintained that the State was a natural institution whose function it was to enable men to live well and virtuously, and that those men who lived outside of it were either below or above the normal level of humanity.[2]

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[1] Id. id., ii. 14, p. 107. "Data est enim huic gladio (*i.e.*, spirituali) omnis potestas in cœlo et in terra, in cœlo quantum ad spiritualia, in terra, quantum ad temporalia. . . . Sic et in proposito: utrumque gladium habet Ecclesia, utriusque est claviger Petrus, terreni et cœlestis regni: omne posse quod habet terrena potestas habet et ecclesiastica. Nulla est itaque potestas in materiali gladio, quæ non sit in spirituali."

[2] Id. id., i. 4, p. 14. "Si dicatur quod non omnis potestas regia est per sacerdotium instituta, dicemus ergo quod nulla est potestas regia non per sacerdotium instituta, quæ non fuerit non recta; propter quod magis erit latrocinium quam potestas si non fuerit sacerdotio conjuncta, vel non fuerit institutione post sacerdotium subsecuta. . . . Regnum ergo non per sacerdotium institutum, vel non fuit regnum sed latrocinium, vel fuit sacerdotio conjunctum."

[3] Id. id., iii. 3, p. 127. "Nam materialis gladius habet suam potestatem a summo Pontifice, cum omnis potestas quæ est in Ecclesia militante est a summo Pontifice derivata; quia nullus potest habere aliquam potestatem juste, nec esse dominus alicujus rei cum justitia, ut supra diffusius diximus, nisi per Ecclesiam, videlicet, quia est per eam spiritualiter regeneratus et sacramentaliter absolutus."

If we endeavour to understand how it was that Egidius in the work with which we are now dealing should run counter to his own earlier doctrine and should contradict the principles both of St Thomas and Innocent IV., we may find a partial explanation in the fact that in another chapter he cites St Augustine as maintaining that there can be no true justice in a community of which Christ is not the founder and ruler, and that he (Egidius) concludes that after the passion of Christ there could be no true commonwealth where men do not revere the Church, and where Christ is not founder and ruler.[3]

Egidius' reference to St Augustine is indeed not very happy or well considered; it is true that St Augustine does maintain that there is no true justice in a commonwealth where men do not worship God, but he does not derive from this the conclusion that there was no commonwealth among the pagans, but only the conclusion that the conception of justice must be omitted from the definition of the State.[4] As we have pointed out in a former volume, this unhappy suggestion of St Augustine, while it was not unknown in the Middle Ages, had no influence upon them; they were too firmly grounded in their belief in the moral function and the divine origin of the State, as founded upon justice.[1] It is curious that Egidius should have departed so far from the normal mediæval conception. We shall see presently that another papalist pamphleteer of the time sets aside this extreme view, probably referring to Egidius, and suggests that the temporal authority is legitimate but imperfect unless it is derived from the spiritual.[2]

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[1] Cf. pp, 33, 34.

[2] Cf. p. 13.

[3] Id. id., ii. 7, p. 60. "Dicemus enim cum Augustino II. De Civitate Dei, cap. 22, quod vera justitia non est, nisi in ea republica cujus est conditor rectorque Christus . . . et post passionem Christi nulla respublica potest esse vera, ubi non colatur sancta mater ecclesia, et ubi non est conditor et rector Christus."

[4] Cf. vol. i. pp. 165, 166.

So far we have examined Egidius' conception of the nature of political authority, and have seen that he maintained that in principle it belonged to the head of the spiritual power—that is, the Pope; and that it could never exist legitimately except as derived from that power, or be held by any person who was not sacramentally regenerated and absolved by it. It will be observed, however, that in one of the passages just cited there occur some words which have yet another significance. No one, he says in this passage, can justly have authority or be "lord" of anything except through the Church—that is, unless he is regenerated and absolved.[3]

Egidius is setting out a new theory, not only of government, but of property; it is, indeed, with this subject that the second book of the treatise is really concerned. We must examine this more closely. It is clear, he says, that all temporal things are under the "dominium" of the Church, even if not in fact, yet in law (de jure), they are subject to the supreme Pontiff.[4] In a passage of which we have already cited the first words, Egidius says that if earthly princes are "sub famulatu" of the ecclesiastical power, it follows that temporal things, which are ruled over by the earthly power, are under the "dominium" of the Church.[1]

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[1] Cf. vol. iii. part ii. chaps. ii. and iii., and this volume, part i. chap. iii.

[2] Cf. James of Viterbo, 'De Regimine Christiano,' chap. vii., p. 28. Cf. p. 411.

[3] Cf. p. 404, note 3.

[4] Id. id., ii. 4, p. 45. "Patet quod omnia temporalia sunt sub dominio Ecclesiæ collocata; et si non de facto, quia multi forte huic juri et veritati rebellant, de jure tamen et ex debito, temporalia summo Pontifici sunt subjecta, a quo jure et a quo debito nullatenus possunt absolvi."

A little farther on Egidius justifies his position in different terms. He maintains that the Church has "dominium superius" in temporal things, others only "dominium inferius," for the Church has "dominium universale," others only "dominium particulare," and "particularia" are contained in "universalia."[2]

This, however, is not all that he says about property. As we have seen, he maintained that no man could justly hold political authority unless it were derived from the Church, and he maintains the same principle about property. There is no lordship, Egidius says, over temporal things or persons, unless it is under the Church and instituted by the Church.[3] And again, he who is not subject to God possesses whatever he has unjustly, and justly loses it.[4] These are drastic statements, but their meaning is set out even more significantly in another passage.

We are compelled, he says, to believe that the temporal lord is, because of original sin, born a child of wrath, and he becomes a child of wrath when he commits actual sin. He is, therefore, alien to God, and cannot justly be lord of anything. It is only when the Church delivers him from original sin by regeneration and from actual sin by absolution that he can become the just lord of his property. It is therefore the Church which has made him the just lord of his property, and it is right that this property should be under the Church from whom he holds his lordship.[1]

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[1] Id. id., ii. 5, p. 47. "Et si terreni principes sunt sub famulatu ecclesiasticæ potestatis, consequens est quod et temporalia, quibus principatur potestas terrena, sint sub dominio Ecclesiæ collocata."

[2] Id. id., ii. 12, p. 82. "Nam licet per superiora dicta sufficienter haberi possit quod Ecclesia habeat in temporalibus dominium superius, cæteri autem inferius, quia, in multis superioribus capitulis, probatum est terrenam potestatem sub ecclesiastica collocari; est etiam paulo ante ostensum quod Ecclesia in temporalibus habet dominium universale, ceteri vero particulare; quia ergo particularia sub universalibus continentur, satis ostensum esse videtur quod Ecclesia habeat dominium superius, ceteri vero inferius."

[3] Id. id., ii. 7, p. 57. "In præsenti autem capitulo volumus declarare quod nullum est dominium cum justicia, sive sit dominium super res temporales, sive super personas laicas, de quo magis posset dubium exoriri, nisi sit sub Ecclesia et per Ecclesiam institutum."

[4] Id. id., ii. 8, p. 63. "Qui ergo non est subjectus Deo, juste perdit et injuste possidet omne illud quod habet a Deo."

These contentions of Egidius Colonna about the nature of property are very remarkable. He maintains, first, that a universal lordship over all property is vested in the Church. We shall presently see that James of Viterbo sets out a position which is almost the same.[2] What the antecedents of this contention may be, we confess we find it very difficult to say. Egidius Colonna at one moment seems to suggest that it is a conclusion derived from the principle that the secular prince is subject to the authority of the Church, and that the temporal property which is under his control must be under the "dominium" of the Church.[3] James of Viterbo seems to suggest the same line of reasoning.

Egidius' second contention, that no one can be properly said to hold any property unless he is in communion with the Church by baptism and absolution, may possibly be related to certain conceptions of St Augustine. We have put together in the first volume some of the more important passages in his works which deal with property, and we must refer the reader to these.[4] Among other things, St Augustine says that by the divine law all things belong to God and to the righteous, and it is possible that something of the kind is in the mind of Egidius, but he does not make any reference to St Augustine in this connection. It may also be suggested that the doctrine of Egidius is related to the mediæval conception of excommunication. We have pointed out in the last volume that some at least of the supporters of Hildebrand maintained that the sentence of excommunication in itself put an end to the relation of subject and ruler, that an excommunicated person ceased to have any political authority. It may be suggested that it was not wholly unreasonable that this conception should be extended from the political "dominium" to the "dominium" over property. This, however, is merely conjecture.[1]

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[1] Id. id., iii. 11, p. 162. "Concedere enim cogimur quod iste dominus temporalis per peccatum originale natus est filius iræ; per peccatum actuale factus est filius iræ; natus autem filius iræ vel factus filius iræ, quia est aversus a Deo et non est sub Domino suo, justicia exigit ut nihil sit sub dominio suo: non ergo erit justus dominus alicujus rei. Regeneratus ergo per Ecclesiam a peccato originali, et absolutus per eam a peccato actuali, fit per Ecclesiam justus dominus rerum suarum; et quia jam est justus dominus rerum suarum et factus est per Ecclesiam, oportet quod res suæ sint sub eo tanquam sub justo domino, et sint sub ecclesia, a qua habet tale dominium."

[2] Cf. p. 416.

[3] Id. id., ii. 5. Cf. last p., note 1.

[4] Vol. i. p. 140.

In a later volume we shall have to consider what relation there may be between this conception of Egidius Colonna and James of Viterbo, and the principles which are set out by Wycliffe in his treatise, 'De Dominio Civili.' In the meanwhile, they are important to us as representing some of the most extreme positions of the supporters of Boniface VIII.

There is yet another interesting and important treatise which sets out the extreme view of the temporal authority of the Papacy—that is, the 'De Regimine Christiano' written by James of Viterbo, and, as seems probable, about the year 1301-2. The author was, like Egidius Romanus, an Augustinian, and studied for many years in Paris, and in 1302 was made first Archbishop of Benevento, and then Archbishop of Naples.[2] This work consists of two parts, the first, "De regni ecclesiastici gloria," the second, "De potentia Christi regis et sui Vicarii." We are here concerned mainly with the second, but the first contains an interesting discussion of the nature of the Church, especially as a kingdom.

Christ, he says in the last words of the first chapter of the second part, is king not only of the heavenly and eternal kingdom, but also of the earthly and temporal,[3] and this authority Christ has for man's benefit left to some men by whom his Church should be ruled.[1] He then raises the question whether these powers, the Temporal and the Spiritual, were given by Christ to one person, or to different people, as in the times of the Old Testament. He admits that the latter view seems reasonable, but a closer consideration leads to another conclusion; and he refuses to accept the suggestion that the vicar of Christ had received the royal authority by a grant from earthly powers, or that the Roman Pontiff holds the imperial power by the grant of Constantine.[2]

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[1] Cf., however, James of Viterbo. See p. 416.

[2] We use the edition published by Professor Arquilliere in 1926, and we are glad to have the opportunity of expressing our great obligations to him for thus making the work accessible to all students. We refer our readers for a further critical examination of the work and its contents to this edition, and to Dr Scholz, 'Die Publizistik,' &c.

[3] Jacobus de Viterbo, 'De Regimine Christiano,' part ii. chap. i., p. 162. "Dicitur autem Christus esse rex, non solum regni cœlestis et eterni, sed etiam temporalis et terreni, quia cœlestia simul et terrena dispensat et judicat."

In discussing this he first points out certain ambiguities in the terms, sacerdotal and royal. The sacerdotal office is itself a royal one, for judgment is a royal function,[3] and, on the other hand, there is a sense in which all the faithful, lay as well as clerical, are priests.[4] He develops this conception of the spiritually regal nature of the prelates of the

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[1] Id. id. id., chap. ii., p. 167. "Conveniens igitur erat hominum utilitati, ut Christus potentiam suam gubernativam super homines, traderet et relinqueret aliquibus hominibus, per quos ejus ecclesia regeretur et dirigeretur in finem, propter quem obtinendum ab hominibus, Jesus Christus in mundum venire dignatus est."

[2] Id. id. id., chap. iii., p. 172. "Videtur autem quibusdam quod hec duplex potestas non eidem persone communicanda et communicata sit; sed cum sint potestates distincte, communicande sunt diversis et distinctis personis, quod patet in statu Veteris Testamenti, in quo diversis personis tribuebatur potestas regia et sacerdotalis. . . . Et secundum hoc videretur dicendum quod, licet Christus sit rex et sacerdos, tamen ejus vicarii scilicet apostoli et eorum successores non sunt sacerdotes et reges, immo solum convenit eis potestas sacerdotalis vel pontifalis, ex concessione Christi. Si autem aliquibus eorum convenit potestas regia, hoc est ex concessione principum terrenorum, sicut ex concessione Constantinii habet Romanus pontifex imperialem potestatem. Sed licet hoc videatur prima facie rationabiliter et verisimiliter dictum, tamen profundius considerare volentibus veritatem plus et aliter dicere convenit."

[3] Id. id. id., chap. iii., p. 180. "Potestas autem regia spiritualis, in veteri quidem Testamento, aliqualiter et ex parte communicata est sacerdotibus. . . . In novo autem testamento communicata est et tradita a Christo apostolis et eorum successoribus, tunc scilicet quando dictum est eis: 'quæcumque ligaveritis super terram ligata erunt et in celo.' Potestas enim ligandi et solvendi est potestas judiciaria, que ad reges utique pertinet."

[4] Id. id. id., p. 176. "Aliter quoque potest distingui de sacerdotio, quia quoddam est proprium, quoddam commune. Proprium est prout quisque fidelium dicitur sacerdos, dum pro se offert Deo spirituale sacrificium sive contriti cordis, sive afflictionis carnis, sive cujuslibet boni operis. De hoc sacerdotio dicit Apoc. i., ubi Johannes de Christo loquens ait, 'Fecit nos Deo et Patri suo regnum et sacerdotes.' . . . Commune autem sacerdotium est quod alicui tribuitur pro salute multorum."

Church at some length,[1] and then points out that this royal authority finds its head in the Bishop of Rome, the successor of Peter, and the vicar of Christ.[2]

There is, then, a Spiritual royal Power as well as a Secular, and he turns to the question of the resemblance (convenientia) and the difference between them. It must be again noticed carefully how far James of Viterbo is from the supposed Hildebrandine doctrine that the secular power is evil, for he urges that the two powers are alike, in that they both come from God and have the same end—that is, the felicity, beatitudo, of men.[3] When, however, he has thus pointed out the resemblance, he goes on to point out how great is the difference between them. The Spiritual Power is greater in dignity than the Temporal; the Spiritual Power is greater "secundum causalitatem," for it institutes the Temporal Power. He is aware that some contend that the Temporal Power is from God only, and in no way from the Spiritual, while others maintain that unless the Temporal Power was instituted by the Spiritual, it was illegitimate and unjust; but he contends that there is another view which is more reasonable—namely, that the Temporal Power is derived from nature, and therefore from God, but that it is imperfect unless it is also derived from the Spiritual Power. Grace does not destroy nature, but perfects it. The human authority which exists among the unbelievers is lawful, but incomplete (informis), and thus the Temporal authority which exists among believers is not perfect until it is approved and ratified by the Spiritual Power.[4]

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[1] Id. id. id., chap. iv.

[2] Id. id. id., chap. v.

[3] Id. id. id., chap. vi., p. 225. "Primo enim, conveniunt hec due potestates regiæ, secundum causam efficientem; quia utraque a Deo est, sed diversimode. . . . Secundo, conveniunt secundum causam finalem; quia finaliter in utraque intenditur beatitudo, sed differenter."

Cf. chap. x., pp. 300-306, for a detailed discussion of the principle that the Tempora Power is in its proper nature good.

[4] Id. id. id., chap. vii. p. 230. "Secundo videndum est; quomodo comparantur ad invicem secundum dignitatem. Est autem simpliciter et absolute dicendum quod potestas spiritualis est dignior et superior multipliciter. . . . Tertio videndum est: quomodo comparantur hae potestates ad invicem secundum causalitatem. . . . Adhuc spiritualis potestas est causa

This may be put in another way. That a man should be over men is according to human law, which is derived from nature, but that a believer should be set over his fellow-believers is according to the divine law, which arises from grace; and, since the divine law is in the charge of the vicar of Christ (est apud Christi vicarium), the institution of believing kings and other temporal powers over the faithful belongs to him. The temporal prince who is in the Church holds his power over men by human law, but over the faithful by divine law. The Temporal Power is instituted, approved, and ratified by the Spiritual, and thus the laws of the Temporal Power must be approved by the Spiritual.[1]

Having thus shown to his own satisfaction that the perfect

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temporalis per modum principii agentis et hoc tripliciter. Primo enim spiritualis est principium agens respectu temporalis, quantum ad ejus institutionem, quia eam instituit ut dicit Hugo de sancto Victore. Sed considerandum est circa hoc quod de institutione regni temporalis, quæ sunt opiniones quasi contrariæ. Quidam enim dicunt quod temporalis potestas a solo Deo est, et a spirituali potestate, secundum suum institutionem, nullo modo dependit. Alii vero dicunt quod potestas temporalis si debeat esse legitima e justa, vel est conjuncta spirituali in eadem persona, vel est instituta per spiritualem, alias injusta est et inlegitima. Inter has autem duas opiniones potest accipi via media, quæ rationabilior esse videtur, ut dicatur quod institutio potestatis temporalis materialiter et inchoative habet esse a naturali hominum inclinatione, ac per hoc a Deo in quantum opus naturæ est opus Dei; perfective autem et formaliter habet esse a potestate spirituali quæ a Deo speciali modo derivatur. Nam gratia non tollit naturam sed perficit eam et format. . . . Imperfecta quidem et informis est omnis humana potestas, nisi per spiritualem formatur et perficiatur. Hec autem formatio est approbatio et ratificatio. Unde potestas humana, quæ est apud infideles, quantumcunque sit ex inclinatione naturæ ac per hoc legitima, tamen informis est, quia per spiritualem non est approbata et ratificata. Et similiter illa, quæ est apud fideles perfecta et formata non est, donec per spiritualem fuerit approbata et ratificata."

[1] Id. id. id., chap. vii. p. 233. "Quod etiam amplius ex hoc declaratur. Nam quod homo sit super homines ex jure humano est, quod a natura perficitur. Quod autem homo fidelis sit super homines fideles, est ex jure divino, quod a gratia oritur. Gratia enim non natura fideles efficit, et quia jus divinum est apud Christi Vicarium, ideo ad eum pertinet institutio fidelium regum et temporalis potestatis super fideles, in quantum sunt fideles. Unde princeps temporalis in ecclesia, ex jure humano, potestatem habet super homines; sed ex jure divino super fideles. Quia ergo fides naturam format; ideo temporalis potestas formando instituitur et instituendo formatur per spiritualem, et per eam approbatur et ratificatur. Unde nec legibus uti debet temporalis potestas, nisi per spiritualem fuerint approbate."

Temporal Power was instituted by and derived from the Spiritual, he next contends that the Spiritual Power has also the right to judge it and to impose upon it punishment, both spiritual and temporal, and can go so far as to deprive it of authority—that is, as he is careful to explain, to deprive the man of his temporal power, not to destroy the Temporal Power itself. This authority belongs, as far as excommunication is concerned, to the bishop, but the full authority of all sorts and over all princes belongs to the Pope.[1]

The third aspect of the superiority of the Spiritual Power is that it is its function to direct and command it. For as in the arts that art which is concerned with the final and principal end controls the lesser, so the Spiritual Power which is concerned with the final end of men must control and command the Temporal Power, which is concerned with the lesser end, and therefore the Spiritual Power has authority over the Temporal, and the Temporal Power is by the divine law in all things subject to the Spiritual.[2]

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[1] Id. id. id., chap. vii. p. 234. "Secundo habet rationem cause agentis respectu ejus, quantum ad judicium. Cum enim eum instituat, ad eum etiam pertinet ipsum judicare. . . . Unde dicit Hugo de Sancto Victore quod spiritualis potestas terrenam potestatem et instituere habet, ut sit, et judicare habet, si bona non fuerit. Habet enim eam judicare: quia eam potest et debet corrigere et dirigere, punire et pœnam ei inferre, non solum spiritualem sed temporalem, ratione criminis et delicti, etiam ad ejus destitutionem procedere si hoc delicti qualitas exigat. Quæ destitutio non est ipsius potestatis, quia sic tolleretur ordo potestatum sed est hominis male utentis potestate sibi data. . . . Licet enim aliis pontificibus conveniat de temporali potestate judicare, nam episcopus potest regem excommunicare, in quantum pertinet ad suam dyocesim, summus tamen pontifex, habet plenum judicium super omnes principes, et secundum omnem modum judicii, qui communicatus est spirituali potestati."

[2] Id. id. id. id., p. 235. "Tertio vero, spiritualis potestas habet rationem causæ agentis respectu temporalis, quantum ad imperium. Sicut enim contingit in artibus quod ars, ad quem pertinet ultimus et principalis finis, imperat arti ad quam pertinet finis secundarius, qui ad principalem ordinatur; sic et in potestatibus se habet. Unde spiritualis potestas ad quem pertinet precipuus finis qui est beatitudo supernaturalis, ita se habet ad potestatem temporalem, ad quam pertinet beatitudo naturalis, quæ est finis secundarius, ordinatur ad supernaturalem, quod imperat ei, et in sui obsequium utitur ea et omnibus, quæ ei subdentur et quæ ad ipsum pertinent. . . . Unde spiritualis potestas, etiam super temporalia quæ-

When the writer has thus considered the comparison of the Temporal and Spiritual Powers with respect to dignity and "causalitas," he turns to the comparison of them "Secundum continentiam," and he maintains that the Temporal Power, which is related to the Spiritual as the inferior to the superior, and as that which is caused to that which causes, is contained in (continetur) the Spiritual Power, and that therefore it is said that the laws of the celestial as well as of the earthly empire were given by Christ to Peter, for Peter and each of his successors, in whom the fulness of the Spiritual Power dwells, possesses beforehand (prehabet) the Temporal Power in a greater and more dignified form than the Temporal prince. He explains his phrase when he adds that the Pope does not carry out the functions of the Temporal Power immediately, except in some cases, but he does this by his commands and directions. This is what is meant when it is said that the Temporal Power pre-exists in the Spiritual. All temporal princes, therefore, must obey him as they would the Lord Jesus Christ, and must acknowledge him as their superior and their head, and if the chief Pontiff commands one thing and the temporal prince another, men must obey the Pontiff.[1]

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cunque imperium habet in quantum spiritualibus nata sunt obsequi, et ad spiritualia ordinari; et temporalis potestas, jure divino quantum ad omnia subest spirituali in quantum ordinatur ad ipsam et etiam propter ipsam."

[1] Id. id. id. id., p. 236. "Ex dictis autem potest accipi comparatio eorum secundum continentiam. Nam quia virtutes inferiores continentur in superioribus, et quæ sunt causatorum preinsunt causatis; ideo temporalis potestas, quæ comparatur ad spiritualem, sicut inferius ad superius, et sicut causatum ad causam, continetur a potestate spirituali: et propter hoc a Christo dicuntur esse concessa beato Petro jura cœlestis imperii et terreni, quia Petrus et quilibet ejus successor, in quo plenitudo spiritualis potestatis residet, prehabet potestatem temporalem, non tamen secundum eundem modum secundum quem habetur a principe seculari, sed modo superiori et digniori et prestantiori. Non enim sic habet eam, ut exerceat ejus opera immediate, nisi aliquibus casibus, sed agit opera ejus nobiliori modo, scilicet imperando et dirigendo, et ad suum finem operibus ejus utendo, et ideo temporalis potestas dicitur pre-existere in spirituali, secundum primam et summam auctoritatem, non autem secundum immediatam executionem generaliter et regulariter. Propter quod principes omnes temporales obedire debent ei, apud quem spiritualis potestas in summo residet, tamquam domino nostro Jesu Christo, et ipsum

In the following chapters, among other matters, he discusses the question in what sense it can be said that the Pope holds the Temporal Power, not only by the Divine Law, but by the human law—namely, by the Donation of Constantine, and he contends that the Donation might be interpreted either simply as a recognition of that which was already the Divine Law, or as a means by which the vicar of Christ might more freely exercise the authority which he already possessed by the Divine Law; or it might be said that in consequence of the Donation the Pope might intervene more immediately in temporal matters, as can be seen from the fact that when the empire is vacant the Pope exercises an immediate temporal jurisdiction.[1]

James of Viterbo has thus arrived at his main conclusion, and he only sets it out again in other terms when, in the ninth chapter, he says that the Pope is superior in dignity and causality (causalitate) to every temporal power, and that it may be rightly said that in the chief Pontiff there pre-exists the fulness of the pontifical and of the royal power.[2] Or again, it is therefore right to say that the vicar of Christ has the fulness of power, for all that governing authority which was

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sicut superiorem et sicut caput recognoscere, ipsum revereri et honorare ac ei subjici . . . unde si summus pontifex mandaret unum, et quicunque princeps temporalis contrarium: obediendum est magis summo pontifici quam principi."

[1] Id. id., chap. ix. p. 255. "Quinto, considerandum est quod summus pontifex non solum jure divino sed etiam jure humano habet potestatem temporalem: scilicet ex concessione a Constantino facta, qui monarchiam tenebat imperii. Si quis autem quærat, quid operatur hoc jus humanum supra divinum, dici potest uno modo: quod hoc jus humanum est divini juris manifestatio vel ad jus divinum conformatio et ejus imitatio et veneratio . . . non auctoritatem contulit, sed reverentiam impendit et regnum terrenum cœlesti subjectum esse debere monstravit. . . . Vel potest dici quod ista concessio fuit quædam co-operatio sive ministerium ad hoc ut potestatem, quam Christi vicarius habebat jure divino, posset liberius exercere de facto. . . . Potest autem et aliter dici: videlicet quod ex hujusmodi concessione potest summus Pontifex magis immediate se intromittere de temporalibus, quod ex eo patet, quia quum vacat imperium exercere potest immediate jurisdictionem temporalem, et sic aliter exercet potestatem temporalem, ut habet eam ex jure Divino et aliter ut habet eam ex jure humano." Cf. chap. x. p. 192.

[2] Id. id. id., chap. ix. p. 268. "Est etiam superior dignitate et causalitate omni temporali potestate, ideo concludi recte potest quod in summo pontifice, pre-existit plenitudo pontificalis et regiæ potestatis."

given by Christ to the Church, sacerdotal and royal, spiritual and temporal, is in the chief Pontiff, the vicar of Christ.[1]

The method of his argument is not the same as that of Egidius Colonna or Henry of Cremona or Ptolemy of Lucca, but the conclusion is the same—that is, that properly all authority, temporal, political, as well as spiritual, belonged to the Pope; that it was only by his grant or acquiescence that the secular ruler possessed and exercised his political authority, and only on the condition that he obeyed the commands of the Pope.

There is one other important and interesting aspect of this work—namely, that the author maintains that the authority of the Spiritual Power extends over temporal things (possessions) inasmuch as they are to be ordered to the end of men's salvation,[2] and he urges that the fact that the secular prince and his subjects pay tribute—that is, tithe—to the Spiritual Power, proves that the Spiritual Power is set over princes even with regard to temporal things (possessions).[3]

He goes on to maintain that, according to the Divine Law, no one justly and legitimately holds any temporal possession if he does not freely submit himself to God, and make a right use of it. Sinners and infidels who withdraw themselves from the lordship of God, and use these temporal things perversely, hold them unworthily and unjustly according to the Divine Law, whatever may be the case with human law. This is the meaning of the saying of St Augustine that by the Divine Law all things belong to the just. No man is subject to God who is not subject to the Ecclesiastical Laws, and therefore no one justly possesses any temporal thing unless he submits himself with regard to it to the Spiritual Power.[1]

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[1] Id. id. id. id., p. 272. "Verum tamen dicitur Christi Vicarius habere plenitudinem potestatis; quia tota potentia gubernativa que a Christo communicata est ecclesie, sacerdotalis et regalis, spiritualis et temporalis est in summo pontifice Christo Vicario."

[2] Id. id. id., vii. p. 240. "Spiritualis igitur potestas etiam super temporalia preest, in quantum ordinantur ad finem salutis. Et quia ad hoc data sunt nobis a Deo, ut eis bene utamur in ordine ad salutem: non aliter appetenda et possidenda et dispensanda sunt quam propter beatitudinem; ideo spiritualis potestas extendit se ad illa secundum id ad quod nobis data sunt. Unde ad spiritualem potestatem pertinet imperare bonum eorum usum et prohibere abusum."

[3] Id. id. id., vii. p. 241. "Amplius, princeps secularis et qui ei subsunt de suis temporalibus censum solvunt potestati spirituali, scilicet decimas, quare potestas ipsa spiritualis etiam, quantum ad temporalia, preest principibus et principum subditis."

It is obvious that this is related to the doctrine of the tenure of property which is maintained by Egidius Colonna, which we have already discussed.[2]

The same principles as those of Henry of Cremona, Ptolemy of Lucca, and James of Viterbo are again expressed in a tract which has been ascribed to Augustinus Triumphus, and which may belong to this time.[3] His conclusions are the same as those of Henry of Cremona, but the arguments which he brings forward in support of them are somewhat different. He begins with the audacious statement that it is clear and obvious that all power, both spiritual and temporal, has come to the prelates of the Church, and to the secular princes, from Christ, but through Peter and his successors, whose power the Roman Pontiff represents.[4]

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[1] Id. id. id., chap. vii. p. 241. "Adhuc spiritualis potestas potest communione fidelium privare. Possessio autem temporalium, et proprietas et actio super communicationem fundatur, quare spiritualis potestas ad temporalia se extendit. Adhuc secundum jus divinum nullus juste ac legitime possidet aliquid temporale si Dei dominio a quo id habet, voluntarie non subdatur, et si eo non recte utatur. Propter quod infideles et peccatores qui se Dei dominio subtrahunt et temporalibus perverse utuntur, inique ac injuste ipsa temporalia possident secundum jus divinum, quicquid sit de jure humano; et secundum hoc verificatur illud dictum Augustini quod 'jure divino omnia sunt justorum.' Non autem subditur Deo, qui non est subjectus ecclesiastice potestati. Rectus quoque usus temporalium est secundum ordinem; ad finem quem spiritualis potestas intendit et ad quem dirigit. Quare nullus juste possidet aliquid temporale nisi in ejus possessione spirituali potestati se subdat. Hoc autem non esset, nisi spiritualis potestas ad ipsa temporalia se extenderet."

[2] Cf. p. 406.

[3] Cf. R. Scholz, 'Publizistik,' &c., for a discussion of the date and authorship.

[4] Augustinus Triumphus, 'Tractatus brevis de duplici potestate prelatorum et laicorum' (in R. Scholz, 'Die Publizistik,' p. 486). "Quamvis ergo sit clarum et manifestum a Deo, quod non potest aliqua tergiversatione celari, omnem potestatem tam spiritualem quam temporalem a Christo in prelatos et principes seculares derivatum esse mediante Petro ejus successore, cujus personam Romanus pontifex repreesentat; temporibus tamen istis aliqui de hoc dubitare videntur, cujus questionis radicem pro modulo intelligenciæ nostræ, non invenire, sed inventum manifestare intendimus."

Then follows an interesting discussion of the question about the derivation of the power of the ecclesiastical prelates from the Pope, in which he finally affirms that the power of orders comes to them from Christ, and cannot be taken from them, but the power of jurisdiction comes to them from the Pope, who can annul it. With this we cannot here deal.[1]

Returning, then, to the subject of the relation of the Spiritual to the Temporal Power, he contends that the ultimate "causa et principium" of corporal things must be spiritual. In all arts the superior authority is that which directs, and it is the spiritual which directs the temporal; the Pope, therefore, must have authority over kingdoms and secular powers, and their laws and statutes have no authority unless they are confirmed by him.[2] The spiritual power which resides in the Pope is always in its nature right (recta), while the temporal power is sometimes perverted (obliqua), and therefore the temporal must be instructed and controlled and judged by the spiritual. (The individual Pope, he admits, may not always be right.)[3]

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[1] Id. id., pp. 487-497.

[2] Id. id., p. 497. "Si ergo Papa, verus Christi vicarius et successor Petri, est principium et causa omnium spiritualium, principium et causa debet esse omnium temporalium et corporalium. Omnes ergo potestatum spiritualium et temporalium a Romano pontifice recognoscere debent, contrarium autem facientes non ponunt unum principium. . . . Cum igitur potestas spiritualis Papæ habet pro fine ipsum Deum modo spirituali, ad quem nemo pervenire potest, nisi mediantibus donis spiritualibus, quorum ipse est amministrator et universalis dispensator, potestas vero temporalis regis vel imperatoris intendat et habeat pro fine ipsum bonum commune et bonum multitudinis naturale, et modo naturali; ad quod quilibet pervenire potest mediantibus virtutibus; oportet quod habeat Papa imperare regibus et secularibus principibus, et eos habet dirigere et ordinare, ac ab ipso eorum potestas debet derivari: nec non eorum leges et statuta per ipsum Papam confirmari, nec robur et firmitatem habent eorum leges, nisi postquam fuerunt per ipsum Papam approbatæ."

[3] Id. id., p. 499. "Cum igitur potestas spiritualis residens in Papa, universaliter loquendo, semper sit recta (et dico universaliter, quod licet posset esse obliquitas in isto Papa vel in illo propter infectionem appetitus, potestas tamen spiritualis ipsa semper recta est, quia immediate est a Deo, qui est ipsa regula), per talem potestatem spiritualem debet institui potestas temporalis regum et principum, et debet judicari et regulari per ipsum, sicut obliquum judicatur et regulatur per rectum. Nam planum est, quod potestatem secularem contingit quandoque esse obliquum."

Both powers, therefore, the Spiritual and the Temporal, reside in the Pope, for he is the representative of Christ, who said, "All power is given to me in heaven and in earth;" the Spiritual Power both in respect of authority and of its exercise, the temporal in respect of authority, while he commits the exercise of it to kings and princes as his instruments. Both Powers, therefore, the Temporal and the Spiritual, reside in the Pope, and are derived from him, as the one head of the universal Church, to the clergy and the laity, and as they are conferred by him, can by him be taken away.[1]

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[1] Id. id., p. 500. "Utramque ergo potestatem spiritualem et temporalem residere consequitur in summo pontifice, unde Christus cujus personam representat, dicit Matth. ult., 'Data est mihi omnes potestas in cœlo et in terra'; sed potestas spiritualis residet in ipso quantum ad auctoritatem et ad executionem, sed temporalis quantum ad auctoritatem, non autem quantum ad immediatam executionem, quia committit exercionem talis potestatis secularis regibus et principibus, qui debent esse organa et instrumenta ejus, in parendo mandatis ipsius in omnibus, et in exequendo potestatem temporalem ad requisitionem ejus. Et quantum ad talem executionem, non est inconveniens quod papa aliqua recognoscat a regibus et secularibus.

Secundum causam primariam, institucionem et auctoritatem universalem, utraque potestas in Romano pontifice residet et ab ipso, tamquam ab uno capite universalis ecclesiæ, in clericos et laicos debet derivari. Et per consequens omnes predictas potestates, casu interveniente, per Romanum pontificem possunt privari, quia sicut ab ipso potestas spiritualis et temporalis omnibus confertur, sic ab eis per eum auferri potest."

CHAPTER X.

BONIFACE VIII. AND PHILIP THE FAIR. "CONTROVERSIAL LITERATURE, II."

We have in the last chapter examined a number of pamphlets or tracts in some detail, which seem, with the work of Ptolemy of Lucca and the Canonists with whom we have dealt in earlier chapters, to represent in its most extreme and explicit form the claim that the Papacy possessed in principle all Temporal as well as all Spiritual authority. How far it can be said that they were drawing out in explicit and dogmatic terms, the principles set forward by Boniface VIII. in the Bulls "Ausculta Fili" and "Unam Sanctam" is a matter which is open to question. Boniface was at least more guarded and more general. There is, however, no doubt that the claims, whether as stated by Boniface or by these other writers, were at once repudiated by the secular power in France and by its literary representatives. We have already referred to some tracts which illustrate this, but we must examine a little more closely some of them which seem to illustrate the confidence with which the claim that the papal See possessed a universal temporal jurisdiction was repudiated, and some aspects of their argumentative processes.

It seems to us that the most comprehensive and also the most really effective of these tracts or pamphlets was the work of John of Paris, entitled 'Tractatus de potestate regia et papali,' but there are two smaller works which we must first consider briefly, the 'Quæstio in Utramque Partem' and the 'Quæstio de Potestate Papæ.'[1]

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[1] For a detailed account of these works and their authors, see R. Scholz, 'Die Publizistik zur Zeit Philipps des Schönen und Boniface VIII.,' pp. 224 and 252.

The first of these, the 'Quæstio in Utramque Partem,' was at one time attributed to Egidius Colonna, but this attribution is not really compatible with his authorship of the work 'De Ecclesiastica Potestate,' which we have already considered; there seems, however, no reason to doubt that it belongs to this time. The writer sets out to show by a series of arguments drawn from philosophy, from the Holy Scriptures, from the Canon Law, and from the Civil Law, that the Pope had not any universal Temporal lordship. He proceeds to contend that the Temporal as well as the Spiritual Power is derived directly from God; that the two Powers are distinct and divided, and he quotes the Gelasian statement that it was Christ Himself who divided them; that Christ exercised no Temporal authority, and when he created the Spiritual Power, gave it no Temporal authority, and that it is only in Spiritual matters that the Temporal is subject to the Spiritual authority.

He insists very emphatically that the King of France holds his authority from no one except God Himself, neither from the Pope nor from the emperor. He then cites a number of arguments by which it was intended to prove that the Pope possessed a universal Temporal authority, and refutes them one by one. As we shall see, the same kind of enumeration reappears both in the 'Quæstio de Potestate Papæ' and in John of Paris, and there is nothing very distinctive or important in this part of the work; but it is worth while to observe that when he comes to the Donation of Constantine, he does not dispute its authenticity, but urges that the jurists maintained that it was invalid; the emperor could not alienate a large part of the empire. If he did, his action was not binding upon his successors; and he adds that even if it were valid it would have no reference to France, for the Franks were never subjects of the empire. It is also noteworthy that the author contradicts the assertion that Pope Zacharias had deposed the last of the Merovingian kings. This, he contends, was done by the barons; the Pope was only consulted by them about the propriety of their action.

The 'Quæstio de Potestate Papæ' contains an interesting summary of the arguments for the Temporal authority of the Pope, of arguments against this, and a detailed refutation of the first. This would be of considerable interest if these arguments were not more completely stated and considered in the work of John of Paris, and it is to this that we turn.

John of Paris begins by setting out in his preface that there are two errors about the authority of the Church: the first, that of those whom he calls the Waldensians, that it is contrary to the nature of the Church that it should have any lordship in temporal things or possess temporal riches; the second, which he calls that of Herod, who, when he heard that Christ was born, thought that he was an earthly king. This latter is the error of those who maintain that the Pope, inasmuch as he is in the place of Christ, possesses the lordship of secular authority and property, and that the secular prince holds his authority from the Pope. John maintains that these views were both wrong; it is right that the prelates of the Church should hold temporal lordship and property, but they hold these by the authority and grant of the secular prince.[1] It is the second question which John discusses in his treatise; but his argument also leads him to further and highly significant questions, which anticipate the development of the Conciliar movement.

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[1] John of Paris, 'Tractatus de Potestate regia et papali.' Prœmium. "Modo consimili circa potestatem ecclesiasticorum pontificum, veritas medium ponit inter duos errores. Nam error Waldensium fuit, successoribus Apostolorum, scilicet, pape et prelatis ecclesiasticis dominium in temporalibus repugnare, nec eis licere habere divitias temporales. . . . Alius vero fuit error Herodis, qui audiens Christum regem natum, credidit ipsum esse regem terrenum. Ex quo derivare videtur opinio quorundam modernorum, qui in tantum supra dictum errorem Waldensium declinant, ad oppositum totaliter deflexi: ita ut asserant, dominum Papam, in quantum est loco Christi, in terris habere dominium in temporalibus bonis principum et baronum, et cognitionem seu jurisdictionem. Dicunt etiam, quod hanc potestatem in temporalibus habet Papa excellentius quam princeps secularis; quia Papa habet eam secundum primariam auctoritatem, ut a Deo immediate, princeps autem habet eam a Papa mediate. . . . Inter has autem opiniones tam contrarias, quarum primam erroneam omnes putant, puto ego quod veritas medium ponit, scilicet quod prelatis ecclesiæ non repugnat habere dominium in temporalibus et jurisdictionem, contra primam opinionem. Nec debetur eis per se, ratione sui status, et ratione qua sunt vicarii Jesu Christi et apostolorum successores: sed eis convenire potest, habere talia concessione et permissione principum, si ab eis ex devotione aliquid fuit collatum eis, vel si habuerint aliunde."

He begins with the Aristotelian principle that the State is a natural institution, which exists for the benefit of the whole community; but he also asserts the necessary place of the Church in human life, for it is its function to lead men to an end which is beyond nature.[1] He maintains that there must be one head in spiritual matters, and that it was Christ Himself, and not any Conciliar authority, which conferred this position upon Peter and his successors; but he repudiates the conception that God has appointed one head over men in temporal matters.[2] He is prepared to admit that the dignity of the priest is greater than that of the prince; but this does not mean that the priest is greater than the prince in all things, and that the authority of the prince is derived from the priest, for the authority of both is derived from the divine power itself. The priest, therefore, is greater than the prince in spiritual matters, and the prince is greater than the priest in temporal matters.[3]

At this point John digresses to discuss the question, in what sense the Pope has authority over the property of the Church. He is "generalis dispensator . . . bonorum ecclesiasticorum," but not "dominus eorum." It is the universal Church which is lord and proprietor of these properties "generaliter," and the separate communities and churches have "dominium" in those things which belong to them. If, therefore, the Pope deals arbitrarily with Church property, he is bound to make restitution, and he may even be deposed if, when he is admonished of his fault, he does not amend.[1] We return later to the question of deposition.

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[1] Id. id., 1 and 2.

[2] Id. id., 3.

[3] Id. id., 5. "Nec tamen si princeps major est sacerdos dignitate, et simpliciter oportet quod eo sit major in omnibus. Non enim sic se habet potestas secularis minor ad potestatem spiritualem majorem, quod ex ea oriatur vel derivatur: sicut se habet potestas proconsulis ad imperatorem, qui eo major est in omnibus, quia potestas sua ab eo derivatur. Sed se habet sicut potestas paterfamilias ad potestatem magistri militum, quarum una non est derivata ab alia, sed ambæ a quadam superiori potestate. Et ideo in aliquibus potestas secularis major est potestate spirituali, scilicet in temporalibus, nec quoad ista est ei subjecta in aliquo, quia ab illo non oritur: sed ambæ oriuntur ab una suprema potestate, scilicet divina immediate: propter quod inferior non est omnino subjecta superiori, sed in his solum in quibus suprema subjecit eam majori. . . . Est ergo sacerdos in spiritualibus major principe, et e converso in temporalibus princeps major sacerdote: licet simpliciter sacerdos major sit, quantum spirituale majus est temporali."

John returns to the main question, and contends that even if Christ held both Temporal and Spiritual Power, He did not commit them both to Peter and his successors; on the contrary, he gave to Peter the Spiritual, and to Cæsar the Temporal. The two Powers, as the Popes had said (referring to Gelasius), are distinct. The one cannot be conceived of as drawn from the other, but each, the secular as well as the spiritual, is derived immediately from God. Thus the Pope does not hold both swords, nor does he possess any jurisdiction in temporal matters, unless it is granted to him by the prince, and John maintains that if it were contended that Constantine gave the Church authority (imperium) in Italy, and consequently temporal jurisdiction, this would imply that the Church did not already possess that power.[2]

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[1] Id. id., 6. "(Papa) est generalis dispensator omnium generaliter bonorum ecclesiasticorum, spiritualium et temporalium. Non quidem quod sit dominus eorum, sed sola communitas universalis Ecclesiæ est domina et proprietaria illorum bonorum generaliter, et singulæ communitates et ecclesiæ dominium habent in bonis sibi competentibus . . . . propter quod si aliter pro libito distraheret papa, et non bona fide, de jure non tenet: et non solum tenetur ad penitenciam de peccato, quasi propter abusum rei non suæ, sed infideliter agit, et ad restitutionem tenetur, scilicet aliunde de patrimonio proprio, si habet aliquid, vel acquireret (cum sit fundator rei non suæ). Et etiam sicut monasterium posset agere ad depositionem abbatis, vel ecclesia particularis ad depositionem episcopi, si appareret quod dissiparet bona monasterii vel ecclesiæ, et quod infideliter, non pro bono communi, sed pro privato, ea detraheret seu distraheret. Ita si appareret quod papa bona ecclesiarum infideliter detraheret seu distraheret, scilicet non ad bonum commune, cui superintendere tenetur, cum sit summus episcopus: deponi posset, si admonitus non corrigeretur, dist. 40 can. (Si papa) ubi dicitur 'Cunctos judicaturus, a nemine judicandus est, nisi deprehendatur a fide devius' (Gratian, Dec., D. 40, 6). Ubi dicit glosa: quod si comprehendetur in quocunque alio vitio et admonitus non corrigatur, sed scandalizet, vel scandalizaret ecclesiam, idem posse fieri. Sed forte secundum alios hoc fieri posset per solum concilium generale, argumentum 20, 1 distinct: can. nemo autem" (Gratian, Dec., D. 21, 7).

[2] Id id., 10. "Et ideo non sequitur, 'Si Christus secundum quod homo utramque potestatem habuerit, quod

We shall return later to John's treatment of the Donation of Constantine.

He is equally emphatic in repudiating the suggestion that the Pope holds the Temporal Power from God, "secundum primam auctoritatem," but does not possess the power to exercise it; while the emperor has the power to exercise it, not from the Pope, but from God Himself. The royal power, he maintains, both in its own nature and in its exercise, was earlier than the papal; there were kings of France before there were Christians in France, therefore the royal power is in no sense derived from the Pope, but from God, and from the people who elect the king or his family. It is interesting to observe that he holds that the power even of the bishop was not derived from God through the Pope, but immediately from God and from the people who elect him or give their consent to the election. It was not Peter who sent out the other apostles, whose successors are the bishops, or the seventy-two disciples, whose successors are the presbyters, but Christ Himself. The doctrine that the Pope holds the power of the Temporal sword from God cannot be proved by the Scriptures, and the words of St Bernard, to which some appealed, had no great authority, and in any case were really inconsistent with this contention, for if the emperor should not choose

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utramque Petro contulerit': sed spiritualem tantum Petro contulit, et temporalem vel corporalem Cesari dimisit, quam a Deo accepit. . . . Amplius summi pontifices dicunt, dictæ potestates subjecto esse distinctæ, scilicet temporalem et spiritualem, distinct 10 quoniam idem octog. d. cum ad verum. (Gratian, Dec., D. 10, 8, and D. 96, 6). Et ca. duo (Gratian, Dec., D. 96, 10). Et sic sunt distinctæ, quod una in aliam non reducitur; scilicet sicut spiritualis immediate est a Deo, ita et secularis. Unde imperium a solo Deo est, ut habetur 23 Quæst. 4 quæsivit (Gratian, Dec., C. 23, 4, 45). Et quia papa non habet gladium ab Imperatore, nec Imperator habet gladium a Papa. dist. octog. 6 si imperator (Gratian, Dec., D. 96, 2). . . Et multa consimilia possent adduci, ad ostendendum, dominum papam non habere utrumque gladium, nec jurisdictionem in temporalibus, nisi sibi concedatur a principe ex devotione' . . . . Mirum etiam videtur, quod Constantinus imperator dedisse dicitur imperium Italicum ecclesiæ, et totam jurisdictionem temporalem: et quod ecclesia illud tanquam datum, si hoc habuit, de jure recepit. Tunc enim non fuisset facta beato Sylvestro donatio: sed redditio ejus quæ suum erat. Cujus contrarium sentit ecclesia, Dist. 96 Constantinus" (Gratian, Dec., D. 96, 13 and 11).

to act according to the Pope's will, the Pope could do nothing more.[1]

The doctrine that all Temporal Power is ultimately derived from the Spiritual, and is subject to it, having been thus discussed in general terms and shown to be false, in the opinion of the author, he proceeds in the next chapters of the treatise to consider a number of detailed arguments for this, and replies to each in turn. We need not recapitulate all of these, but the discussion of some of them is highly important and penetrating. In the thirteenth chapter, John of Paris introduces the matter by asking what exactly were the powers which the apostles and disciples received from Christ, and he summarises these as being—the power to consecrate the sacraments, the power of administering the sacraments, the authority to preach, the judicial authority in spiritual offences, the ordering of the ministry, and the authority to receive what was necessary for their maintenance.[1]

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[1] Id. id., 11. "Sunt vero aliqui sentientes, quod papa habet a Deo jurisdictionem temporalem secundum primam auctoritatem, sed executionem non habet, sed Imperator executionem habet, non quidem a papa sed a Deo, et per hoc volunt solvere aliqua predictorum. . . .

Item prius fuit potestas regia secundum se, et quantum ad executionem, quam papalis: et prius fuerunt reges Franciæ in Francia, quam Christiani: ergo potestas regia nec secundum se, nec quantum ad executionem, est a papa: sed est a Deo, et a populo regem eligente in persona vel in domo. . . . Amplius etiam, potestas inferiorum pontificum et curatorum magis videtur esse a Deo, mediante papa, quam regia potestas, eo quod immediatius dependunt prelati ecclesiastici a papa quam principes seculares: sed potestas prelatorum inferiorum non est a Deo mediante papa, sed immediate a Deo et a populo eligente vel consentiente. Non enim Petrus (cujus successor est Papa) misit alios apostolos, quorum successores sunt alii episcopi: nec 72 discipulos, quorum successores sunt presbyteri curati: sed Christus immediate misit, Joan. 20 and Lucæ. 10. . . . Potestas ergo regia multo minus est a papa, qualitercunque. . . . Non ergo videtur dicendum, quod papa habeat immediate a Deo potestatem gladii secularis, cujus executio ei regulariter non convenit. . . . De nullo etiam loco scripturæ canonicæ possunt accipere prædictam discretionem: nisi forte velint accipere dictum Bernardi, ponentis quod papa habet gladium materialem in nutu. Sed dictum hoc non est magnæ auctoritatis, magis est contra eos quam pro ipsis. Et signanter dicit Bernardus quod papa materialem gladium habet in nutu: quia ubi innuit papa propter necessitatem boni spiritualis, imperator debet exercere jurisdictionem secularis potestatis. Si tamen nolit vel non videtur sibi expedire, papa non habet aliud facere: quia non habet ipsum in jussu, sed imperator tantum: sicut ipsemet dicit et infra dicetur magis."

It is, he says, with regard to the fourth of these, the judicial authority in cases of spiritual offences, that the question of the relations of the Spiritual and Temporal Powers arises. The ecclesiastical judge has authority in these cases, and if his authority is resisted, he has the power of excommunication, but that is all the authority which, strictly, he possesses. He admits that if the temporal prince is a heretic and incorrigible, the Pope may take such action by excommunicating those who obey him that the people may be led to depose him, but it is the people properly who depose, the Pope does so only "per accidens." This is followed by the contention that if the Pope is criminal and scandalises the Church and is incorrigible, the prince can indirectly excommunicate him and depose him "per accidens"—that is, by means of the cardinals, and can forbid the people to obey him. Each authority, therefore, has the same kind of power over the other.

If the prince offend in temporal matters, the Pope has no authority in the first place; it is for the barons to deal with him, but they may invite the help of the Church. If the Pope transgresses in temporal matters, the prince has authority to warn him, and if necessary to punish him, and the author cites the action of the emperor Henry III., at Sutri. If the Pope offends in spiritual matters, it is for the cardinals to take action, but if he is incorrigible, and their power is not sufficient, they can call the Temporal Power to their help, and the emperor at their request can proceed against the Pope; and he cites the alleged case of Constantine II. and the deposition of John XII. The ecclesiastical power, therefore, is spiritual, and the prince is not in virtue of that power subject to the Pope, except in that sense which has been stated above.[2]

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[1] Id. id., 13.

[2] Id. id., 14. "De quarta vero potestate, . . . est tota difficultas . . . Si enim non vult eam acceptare, compellet eum judex ecclesiasticus per excommunicationem, vel aliam pœnam spiritualem, quæ est ultima quam potest inferre, nec ultra potest aliquid

John then proceeds to discuss in detail the many arguments for the temporal authority of the Pope. These had been summarily stated in the twelfth chapter. We only deal with the discussion of them when it seems specially important.

The arguments founded on the analogy of the sun and the moon and the interpretation of the words of Scripture

facere, nisi dico per accidens. Quia si esset hæreticus et incorrigibilis et contemptor Ecclesiæ censuræ, posset Papa aliquid facere in populo unde privaretur ille seculari honore, et deponitur a populo. Et hoc faceret papa in crimine ecclesiastico cujus cognitio ad ipsum pertinet, excommunicando s. omnes qui ei ut domino obedirent, et sic populus ipsum deponeret, et papa per accidens.

Sic etiam e converso, si papa esset criminosus et scandalisaret Ecclesiam et incorrigibilis esset, princeps posset ipsum excommunicare indirecte, et deponere ipsum per accidens, movendo s. ipsum per se et cardinales. Et si quidem papa acquiescere nollet, posset aliquid facere in populo, unde compelleretur cedere, vel deponeretur a populo: quia Imperator posset sub hypotheca rerum, vel pœna corporum inhibere omnibus et singulis, ut nullus ei obediret vel serviret ut papa. Et hoc potest uterque in alterum. Nam uterque, s. papa et Imperator, universalem et ubique habent jurisdictionem: sed iste spiritualem et ille temporalem . . . . Ubi vero rex peccaret in temporalibus, quorum cognitio ad Ecclesiasticum non pertinet, tunc non habet ipsum corrigere primo, sed barones et pares de regno: qui si non possunt vel non audent, possunt invocare auxilium Ecclesiæ; quæ requisita a paribus in juris subsidium potest monere principem et procedere contra ipsum modo prædicto.

Similiter vero, ubi papa delinqueret in temporalibus, quorum cognitio ad principem secularem pertinet, ut si mutuaret ad usuram, vel mutuantibus faveret et præcipue in iis quæ per leges civiles sunt prohibita: imperator si esset, haberet ipsum primo corrigere immediate monendo, et postea pumiendo. Nam ad principem pertinet omnes malefactores corrigere primo jure. . . . Unde commendabiliter Heinrichus . . . imperator duos de papatu altercantes, non solum canonica censura, sed imperiali auctoritate deposuit; ut legitur in Chronicis Romanorum. Et dicitur quod primo jure habet imperator ratione delicti præcipue civilis, papam immediate corrigere. . . . Si vero in spiritualibus delinquat papa . . . tunc primo monendus est a cardinalibus, qui sunt loco totius cleri: et si incorrigibilis esset, nec possent per se amovere scandalum de ecclesia, tunc in subsidium juris haberent supplicando invocare brachium seculare: et tunc imperator requisitus a cardinalibus, cum sit membrum Ecclesiæ, deberet procedere contra papam, ex quo ecclesia non habet gladium secularem. . . .

Et sic legimus in Chronicis quod Constantinus secundus qui post ambitionem papatus, cum fecisset multa Ecclesiæ scandala, per princepem est depositus, et zelo fidelium oculis est privatus. Similiter Johannes XII. . . . per imperatorem et clerum de papatu depositus est. . . .

Ex quibus patet, quod prædicta potestas est spiritualis: nec principes ratione hujus sunt Papæ subjecti, nisi ut supra dictum est."

relating to the two swords he sets aside summarily on the ground that these are merely allegories, and he cites Dionysius, the Areopagite himself, as saying, "Mystica autem theologia non est argumentativa nisi accipiatur probatio ex alia Scriptura."[1] He also summarily sets aside the argument based on the words of Peter Damian, which he cites as from Pope Nicolas, that Christ had committed to Peter "the laws both of the heavenly and earthly empire," on the ground that a statement of a Pope about his own power, unsupported by the authority of Holy Scripture or canonical authority, was not very good evidence.[2] The contention that Pope Zacharias had deposed the King of the Franks he also sets aside. He points out that there were various accounts of the incident in the Chronicles, and that it might be better to say that Pope Zacharias consented to the deposition, and that even if it were true that he had deposed the king, it was not very conclusive, for cases could be found where the emperor had seemed to exercise ecclesiastical authority. No important conclusion should be based on isolated cases.[3]

More important, however, than these is his discussion of the argument based upon the principle that material things (corporalia) are ruled by the spiritual. The contention based on this is, he says, ill-founded, for it assumes that the royal authority is material and not spiritual, and has the care of bodies only, not of souls. This is false, for its end is to set forward the common good of the citizens—that is, above all, a life which is according to virtue. Aristotle thus maintains in the Ethics that the purpose of the legislator is to make man good, and to lead him to virtue, and in the Politics he says that as the soul is better than the body, the legislator is better than the physician, for the legislator cares for the souls of men, the physician for their bodies.[4]

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[1] Id. id., 15, 19.

[2] Id. id., 15. "Christus Petro cœlestis terrenique imperii jura concessit. Respondeo, ubi quæritur de potestate papæ in temporalia, efficax est testimonium imperatoris pro papa; et non est multum efficax testimonium papæ pro se ipso, nisi dictum papæ fulciatur auctoritate Scripturæ sacræ, vel scripturæ canonicæ."

[3] Id. id., 15.

[4] Id. id., 18. "Quod autem arguitur vigesimo quod corporalia reguntur per spiritualia, et ab ipsis dependerent

He deals curtly with the argument that it was the Pope who made laws, and that the prince could not make or administer laws unless they were approved by the Pope. This is false, and he first cites from Gratian a declaration of Pope Leo IV. to the Emperor Lothair, in which he declared his intention to keep and observe the imperial "capitula" and commands. He then dogmatically asserts that the Pope has no authority to abrogate any laws except those which belong to his own jurisdiction, and that to maintain that the Pope makes laws for the prince, or that the laws of the prince require the Pope's approbation, is to destroy the whole nature of authority, whether this is regal or political—that is, whether the prince governs according to laws which he makes himself or according to laws which are made by the citizens.[1]

ut a causa. Respondeo; argumentum, ut sit factum, multipliciter deficit. Primo, quia supponit, quod potestas regalis sit corporalis, et non spiritualis, et habeat curam corporum, et non animarum: quod falsum est; ut patet ex supradictis, cum ordinetur ad bonum commune civium non quodcunque, sed quod est vivere secundum virtutem. Unde dicit philosophus in Ethicis, quod intentio legislatoris est homines bonos facere, et inducere ad virtutem. Et etiam in Politicis dicit, quod sicut anima melior est corpore, sic legislator melior est medico: quia legislator habet curam animarum, medicus corporum."

[1] Id. id., 18. "Quod autem dicitur 24, quod papa habet facere leges, eo quod princeps non potest facere leges, vel sis uti quousque fuerint per papam approbatæ: dico quod falsum est ut dicit expresse Leo Papa, scribens Lothario Augusto, distinct. 10 de Capitulis di. (Gratian, Decretum, D. 10, 9) sic 'de capitulis et præceptis imperialibus vestris et prædecessorum vestrorum irrefragabiliter custodiendis et conservandis, quantum voluimus et valemus, Christo propitio et nunc et in æternum conservaturos modis omnibus profitemur; et si forte quislibet vobis aliter dixerit, vel dicturus fuerit, sciatis ipsum pro certo mendacem': nec per canones semper legibus derogatur nisi quo ad casus spirituales. Nec papa posset leges tollere, nisi quoad suum forum ut dicit Io. et alii. Dicere autem ut isti magistri dicunt, quod papa tradit leges principibus, et quod princeps non potest legem aliunde sumere, nisi per papam fuerint approbatæ, est omnino destruere regimen regale et politicum et incidere in errorem Herodis timentis et putantis Christum regnum destruere terrenum. Quia secundum Philosophum in 1 Politicorum, principatus tunc solum dicitur regalis, quando quis præest secundum leges quas ipse instituit. Cum vero præest non secundum arbitrium suum, sed secundum leges, quas cives vel alii instituerunt, dicitur principatus civilis vel politicus non regalis. Si ergo nullus princeps regeret nisi secundum leges a papa traditas, vel ab eo primo approbatas, nullus principaretur principatu regali vel politico, sed solum papali: quod est regnum destruere et omnem principatum antiquum evacuare."

In another chapter he deals with the suggestion that kingship is essentially evil, because it was written in the Scriptures that God gave the Hebrews a king in his wrath. He explains that this did not mean that kingship was in its own nature evil and displeasing, to God, but that God had chosen this people as His own, and had given them a form of Government better than the pure monarchy. For though, as John understood him, Aristotle had said that the monarchy of the virtuous man was the best of the pure forms of government, yet the best form of all is one in which the aristocratic and democratic elements are combined with the monarchical; it was a government of this kind which God had given to Israel under Moses and Joshua. (This conception of the best kind of government is interesting in the development of political ideas, and we have dealt with it in a former chapter.[1]) It is noteworthy that John goes on to suggest that it would be well if the same principle were applied to the government of the Church. The anticipation of the Conciliar movement is evident.[2]

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[1] Cf. pp. 79 and 94.

[2] Id. id., 20. "Sed quare ergo, 'indignatus concessit eis regem.' Dicendum quod non ideo, quia regale regimen ei displiceret simpliciter ut malum: sed ideo, quia illum populum sibi elegerat ut peculiarem, Deut. 6, et instruxerat eis regimen melius puro regali, saltem illi populo propter duo. Primum est, quia licet regimen regium, in quo unus simpliciter principatur secundum virtutem, sit melius quolibet alio regimine simplice, ut ostendit Philosophus in 3 Politicorum: tamen si fiat mixtum cum aristocratia et democratia, melius est puro, in quantum in regimine mixto omnes aliquam partem habent in principatu.

Per hoc enim servatur pax populi, et omnes talem dominationem amant et custodiunt, ut dicitur in 2 Politicorum: et tale erat regimen a Deo optime institutum in populo: quia erat regale, in quantum unus præerat simpliciter omnibus singulariter, ut Moyses vel Josua. Erat etiam aliquid de aristocratia qui est principatus aliquorum optimorum principantium secundum virtutem, in quantum sub illo viro eligebantur 72 seniores, Deut. 5. Erant etiam ibi aliqui de democratia, in principatu populi, in quantum 72 eligibantur a populo, et de toto populo, ut dicitur ibidem: et sic erat optime mixtum, in quantum omnes in regimine illo aliquid habebant, sive aliquam partem. Et sic certe esset optimum regimen Ecclesiæ, si sub uno papa eligerentur plures ab omni provincia, et de omni provincia, ut sic in regimine Ecclesiæ omnes haberent partem suam. Aliud etiam erat, propter quod tale regimen erat melius illi populo, quam primum regale: quia licet regimen regale sit optimum in se, si non corrumpatur, cum propter magnam potestatem, quæ regi conceditur, de facili regimen degeneret in tyrannidem, nisi sit perfecta virtus ejus cui talis potestas conceditur."

Finally, he repudiates the contention that the Pope could require the acceptance of his claims under the penalty of excommunication. The Christian faith is catholic and universal, and the Pope cannot establish an article as belonging to the faith without a general council, for the world is greater than Rome and the Pope, and a council is greater than the Pope alone.[1]

John's treatment of the Donation of Constantine is highly important, and deserves a place by itself. We have already observed that in the tenth chapter John of Paris had argued that the contention that the Pope held all Temporal as well as Spiritual Power from Christ Himself was not consistent with the contention that it was Constantine who bestowed universal authority upon him.[2] It is in the twenty-second chapter, however, that he proceeds to a formal discussion of the nature and validity of the Donation. He does not suggest that it was spurious, but he argues that its nature had been misrepresented, that in any case it had no relation to France, and that it was legally invalid. It is sometimes, he says, maintained that Constantine transferred to Pope Sylvester the Western empire and the imperial insignia, and therefore some held that in virtue of the Donation the Pope was emperor and lord of the world, and could create and depose kings as the emperor could. This, he says, is not in accordance with the historians, or the terms of the Donation. What Constantine transferred to the Pope was a certain territory—namely, Italy, and some other provinces, in which France was not included, and he transferred his empire to the Greeks and built the new Rome. The Pope has therefore no political authority over the King of France, first, because the Donation only had reference to a limited territory in which France was not included; secondly, because the Donation was really, according to the jurists, invalid for various reasons; thirdly, because even if it were valid and affected the whole empire, the Franks were never under the domination of the Roman empire.[1]

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[1] Id. id., 21. "Et subditur, anathematis pœna. Et idem recitatur in gestis concilii Chalcedonensis. Amplius, cum fides Christiana sit catholica et universalis, non potest summus pontifex hoc ponere sub fide sine concilio generali: quia papa non potest discernere statuta consilii, di, 19 Anastasius (Gratian. Decretum, D. 9, 8 and 9). Nam licet concilium non possit proprie legem imponere, extra de electione, significasti (Decretals, i. 6, 4) et 35 quæstione 6 veniam (Gratian, Decretum, C. 35, 9, 5); tamen non intelligitur in iis quæ fidei sunt, eo quod orbis major est urbe et papa, concilium majus est papa solo."

[2] Cf. p. 424.

It is plain that the Donation of Constantine did not appear to John of Paris of much importance. He interpreted it in accordance with what was probably its original significance,[2] as a grant of authority in Italy and some other provinces, and flatly denied that it had a general or universal significance, and he argued that it was at least very doubtful if it had any legal validity.

John of Paris had thus established to his own satisfaction that the doctrine that the Papacy held the supreme Temporal as well as Spiritual Power was indefensible. The arguments which we have considered were, however, expressed in general terms, or at least without any direct reference to the circumstances of the time. In the concluding chapter he turns to the question of the action which might legitimately be taken against the Pope, and he is clearly considering the situation which had arisen with regard to the relations of Boniface VIII. and Philip the Fair.

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[1] Id. id., 22. "Dicunt enim quod Sylvestro successoribusque dederit imperium occidentale et imperialia signa: ut palatium suam, et coronam et alia hujusmodi. Et ideo volunt aliqui, quod ratione hujus doni summus pontifex imperator est et dominus mundi: et quod potest reges constituere et destituere, sicut Imperator, et precipue imperio vacante. . . . Et quidem sciendum de donatione prædicta, quod sicut accipitur ex chronicis Hugonis Flaviacensis et in libro de Cosmographia et ex epistola Constantini ad episcopos, et ex testamento ejusdem, ipse Constantinus non dedit nisi certam provinciam, scilicet Italiam, cum quibusdam aliis, ubi Francia non includitur: et imperium transtulit ad Græcos ubi novam Romam ædificavit. . . . Ex quibus ergo suppositis apparet, quod ex dicta donatione et translatione, papa nihil potest super regem Franciæ, propter quatuor.

Primo quidem, quia dicta donatio non fuit nisi de portione determinata, in qua Francia non includebatur, nec translatio fuit facta totius imperii sive monarchiæ mundi ad Germanos, cum etiam post translationem predictam, qua magis fuit divisio Imperii, vel nova imperii appellatio, quam translatio, remanserunt ad huc Imperatores apud Græcos.

Secundo, quia dicta donatio nihil valuit propter quatuor, quam in Glosa juris civilis ponuntur. . . . Ex quibus dicunt Juristæ quod donatio non valet.

. . . .

Tertio, apparet quod ex dicta donatione nihil habet papa super regem Franciæ, dato etiam quod valuisset et generalis de toto imperio fuisset: quia licet Gallici inveniantur tempore Octaviani Augusti imperio Romano fuisse subjecti, tamen Franci nunquam. (Cf. id. id., 16.)

Potest nihilominus dici, quod Constantinus nunquam dedit imperium Ecclesiæ simpliciter; sed dedit urbem, et quasdem provincias occidentales, et signa imperialia, ut de ipsis provinciis disponeret; sedemque suam transtulit Constantinopolim cum tota dignitate imperii."

[2] Cf. vol. i., pp. 287-290.

If any dispute arise, he says, about the election of a Pope, and if, in the judgment of the learned and other persons who are concerned, there had been some unlawful action, the Pope was to be admonished to retire. If he would not do this, an appeal might be made to a general council; and if he resisted with violence, the secular arm should be called in to remove him from the Holy See, as was done in the case of Benedict IX. and Cadalous and Constantine II. If the Pope maintains any doctrine which is contrary to the faith of the Church, he is already judged. If the Pope were suspected of some fault which, however, was not clear and manifest, he could not be judged, and even if the fault were clear and manifest, as, for instance, incontinence or homicide, he could not be judged by any one, " per modum auctoritatis," he could not be cited or excommunicated, for he had no superior.[1]

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[1] Id. id., 23. "Sed circa hoc est considerandum, quod contra papam potest intelligi esse quadrupliciter discussio et judicium, scil: de statu, de potestate, de potestatis abusu, et personali defectu. . . . Si vero contra personam, vel electionem summi pontificis, post discussionem diligenter a literatis et ab aliis, quorum interest, factam, inveniretur aliquid illegitimum contra statuta, non esset dissimulandum. Sed monendus cedere: et si nolit, posset excipi, et generale concilium peti, et ad ipsum concilium appellari; imo in tali casu deberet, si pertinax inveniretur cum violentia, advocato brachio seculari a sede removeri, ne prophanarentur Ecclesiæ sacramenta. Sic enim legitur in Chronicis Romanorum pontificum de Benedicto nono, et Cadalo Portuensi episcopo, Constantino secundo et aliis quibusdam propter intrusionem per brachium seculare commendabiliter a sede depositis. . . .

Sed quis judicabit eum hereticum. Responsio. Si dixerit et affirmando tenuerit aliquid, quod est contra id quod est in symbolo fidei per ecclesiam alias approbato, jam dicitur judicatus. Nam qui non credit jam judicatus est.

. . . .

De potestatis vero sive abusu et personali defectu suo . . . si non est evidens aut manifestum, absque dubio non licet judicare: sed semper in meliorem partem interpretandum est et trahendum, etiamsi prima facie aliquid mali coloris occurrat. Et minus est licitum de papa quam de

What was to be done, however, if the Pope, without a general council, declared a man to be a heretic for holding a view about which there were "opiniones" (different opinions), or if he were to declare a man to be a heretic because he asserted that the King of France, or some other person in his position, was not subject (*i.e.*, to the Pope). John replies that, in the first place, the words of the Pope are always to be interpreted as far as possible in a good sense, and this applies to such a statement; the Pope might be taken to mean that the King of France was subject to him in matters concerning sin, and therefore such a claim should be endured as far as was possible without danger to justice and truth.

If, however, there were danger to the commonwealth in delay, and the Pope used his spiritual sword to the disturbance of the people, and there was no hope that he would desist, the Church should proceed against him, and the prince might resist the violence of the sword of the Pope with his own sword. In doing this he was acting not against the Pope, but against the enemy of himself and of the commonwealth, not against the Church, but for it. John concludes by referring again to the traditional deposition of Pope Constantine by the people, and the supposed deposition of Benedict IX., and the others by Henry II.[1]

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aliis quibuscunque. Si vero sit factum ex genere suo malum, et manifestum ut incontinentia vel homicidium, vel ex lege prohibitum, non potest judicari per modum auctoritatis ab aliquo, citando vel excommunicando, cum superiorem non habeat."

[1] Id. id. id. "Sed quid si papa dicat, quod reputat talem hereticum, qui tenet aliquid de quo sunt opiniones, et dicat hoc sine concilio generali: vel si dicat quod reputat hæreticum omnem hominem asserentem regem Franciæ vel aliquem hujusmodi non esse subjectum? Responsio: verba summi pontificis indefinite dicta, semper debent trahi ad aliquem sanum sensum, quantum potest fieri: unde dicta verba non debent accipi sic, quod non possit ad eum appellari, vel quod sit divinum habens in rebus ipsis, vel quod papa se habeat intromittere de tuo et meo. Hoc enim esset manifeste contra scripturam et contra omnem doctrinam, et novitas quædam: quam non proferret summus pontifex, nisi cum magna maturitate, et habito prius concilio generali, et discussione facta ubique per literatos.

Et ideo debet intelligi in sano sensu, scil. ratione delicti, ubi quæstio movetur de peccato: vel debet intelligi in foro conscientiæ, ut dictum est supra, quousque super hoc aperuerit intentionem suam. Si vero finaliter aperiat intentionem suam in tam novo et injurioso sensu (quod absit) debet cum patientia tolerari, quantum potest

Finally, he again discusses the question whether the Pope could resign, or could be deposed. He maintains that the Pope could undoubtedly resign, and that he could be deposed by a general council. He gives it as his own opinion that the College of Cardinals could depose him; they act in the place of the Church when they elect him, and it would seem that in the same way they could depose him. He also quotes a gloss on the famous passage in Gratian, 'Si Papa,' which extends the grounds of the deposition of the Pope from heresy to any other grave vice which he will not correct, even when he has been admonished.[1]

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sine periculo justitiæ et veritatis, juxta illud Matth. v., 'Quicunque angariaverit te mille passus, vade cum illo et alia duo millia': et debet ad eum haberi refugium qui, sicut cor regis, ita et cor papæ habet in manu sua: et potest ipsum quoque si voluerit inclinare et vertere ad ipsum papam, sicut et regem de sede amovere.

Si tamen periculum Reipublicæ sit in mora quia scilicet trahitur populus ad malam opinionem, et papa commoveat populum indebite per abusum gladii spiritualis. Ubi etiam non speratur quod desistat aliter, puto quod in hoc casu Ecclesia contra papum debet moveri et agere in ipsum: princeps vero violentiam gladii papæ posset repellere per gladium suum, cum moderamine: nec in hoc ageret contra papam, sed contra hostem suum, et hostem reipublicæ: sicut Aioth Judæus, qui Eglon regem Moab interfecit, sagitta infixa in femore ei, eo quod gravi servitute populum Dei premebat, non est reputatus interfecisse rectorem, sed malum et hostem. Hoc enim agere, non est contra Ecclesiam agere sed pro Ecclesia.

Sic enim commendabiliter populus zelo fidei commotus, Constantinum papam, qui ecclesiæ in scandalum erat, oculis privavit et deposuit. Sic et Henricus Imperator, Romam vadens, Benedictum nonum, et alios duos, qui contentionibus suis scandalizabant ecclesiam, imperiali et canonica censura deposuit, et Clementem secundum Romanæ ecclesiæ papam constituit, ut legitur in Chronicis Romanorum."

[1] Id. id., 24. "Sed ad deponendum decet quod fiat per concilium generale. . . . Credo tamen, quod simpliciter sufficeret ad depositionem hujusmodi collegium cardinalium: quia ex quo consensus eorum facit papam loco ecclesiæ, videtur quod similiter possit eum deponere, si quidem fuerit causa rationabilis, et deponunt eum meritorie. Si vero non fuerit sufficiens, peccaret.

. . . .

Ergo a simili, collegium cardinalium vice totius Ecclesiæ poterit papam invitum deponere. Item distinctio 40 c. si papa (Gratian, Decretum, D. 40, 6) dicitur: 'Cunctos judicaturus a nemine judicandus, nisi deprehenderetur a fide devius.' Ubi dicit glossa quod si deprehenderetur in quolibet alio vitio, et admonitus non corrigeretur, et ecclesiam scandalizaret et incorrigibilis esset, inde posset accusari et deponi: quia talis contumacia hæresi æquipollet.

. . . .

Vel potest dici, quod potest deponi a collegio, vel magis a generali concilio, auctoritate divina, cujus consensus supponitur et præsumitur ad eum deponendum, ubi apparet manifestum scandalum et incorrigibilitas ipsius præsidentis."

This treatise of John of Paris deals more comprehensively than any other with the whole question of the Temporal Power of the Pope, and he emphatically repudiates all the contentions on which it had been founded. He reasserts the Gelasian tradition that Christ divided the two powers; he brushes aside arguments based on allegorical phrases as based on a misconception of the place of allegory; he criticises the historical arguments; he treats the Donation of Constantine as invalid and irrelevant to the case of France; he sets aside the argument that the Temporal Power only deals with material things, and should therefore be controlled by the Spiritual, for he maintains that the Temporal Power also deals with the concerns of the soul; and he flatly asserts that the Pope has no more power to depose the king than the king has to depose the Pope. The king is entitled to defend himself and his State against the violence of the Pope by the use of his material power. He is in favour of a constitutional Government for the State, and recommends it also for the Church; and finally, he is clear that the Pope can be, in certain cases at least, deposed by a general council. The work is interesting to the historian, apart from the question of its intrinsic merits, for it serves to represent the confident and thorough-going temper in which the French king and his advisers met the claims of Boniface VIII.

In the course of the conflict between Boniface VIII. and Philip the Fair, the assertion of the Temporal authority of the Papacy had been pushed to its furthest point. It may, indeed, be said that the principles developed by Innocent IV. and the Canonists who followed him were clear and emphatic; that the Temporal Power, properly speaking, belongs to the Spiritual, and is derived from it; and that Boniface was only reasserting these principles in the Bull "Unam Sanctam," and that even Henry of Cremona and Egidius Colonna and James of Viterbo were only dealing with the same position in detail. No doubt, however, it was the fact that these claims were now related to an actual and violent dispute between the King of France and the Papacy which gave them a new significance. They might hitherto have been regarded as matters of merely academic interest, but they had now become of practical importance. As such, they were immediately and unhesitatingly repudiated by the Temporal Power, as represented by the King of France and by those who spoke for France.

It is not within the scope of this work to deal with the last stages of the conflict between Boniface VIII. and Philip the Fair. It is enough for our purpose to observe that with the death of Boniface the claim that the Spiritual Power also possessed the Temporal ceased to have any great practical meaning. It is, indeed, true that during the earlier part of the fourteenth century those claims were sometimes expressed in the most dogmatic terms, but they had no longer the same significance.[1]

We have in this and the previous volumes endeavoured to give some reasoned account of the principles of the relations between the Temporal and the Spiritual Powers from the time of the conversion of Constantine down to the fall of Boniface VIII., and have endeavoured to do this in some relation to the actual circumstances of these centuries. We have already said, and we should like to repeat it with some emphasis, that in our judgment these relations and the frequent conflicts between the two Powers had very little intrinsic relation to the development of the general political principles of the Middle Ages. These principles, the supremacy of law, the community as the source of political authority, the limited authority of the ruler, and the contractual nature of the relations between the ruler and the community, were not save incidentally related to the disputes between the two Powers.

This does not, however, mean that these disputes were unimportant, or that the principle which lay behind them was insignificant. On the contrary, we should not hesitate to say that the two principles in which we most clearly recognise the difference between the ancient world and the modern are, first, the recognition of the essential equality of men in virtue of their common powers of reason and morality, and secondly, the principle which arises out of this, the necessary freedom of the moral and spiritual life. Men must be free because they are equal, they are equal and free because the moral and spiritual personality of one cannot be measured against that of another, and must not be coerced by it.

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[1] We hope, however, to deal with this in the next volume.

It is no doubt true that the Spiritual Power in the Middle Ages had little sense of the liberty of human personality as against itself, but at least it did assert the freedom of the moral and spiritual elements in human society as against the Temporal Power; and in doing this the Church prepared the way for the great movement of the modern world against its own use of the coercive power of the State.

It is, then, this fact, that the conflicts of the Temporal and Spiritual Powers in the Middle Ages are forms of the secular process of the liberation of humanity, which gives them their significance. It was fortunate for mediæval and modern society that the Western Church as represented by Pope Gelasius I. had, as early as the fifth century, formulated in such clear terms the principle of the autonomy of the two great Powers. To that principle the Middle Ages were, on the whole, faithful. It is no doubt true that the translation of this dualistic principle into the terms of the common life proved immensely difficult, but the difficulty has no more been completely overcome by us than by the men of the Middle Ages.

It was no great wonder if the reforming kings and emperors sometimes laid violent hands upon those who represented, but in evil fashion, the Spiritual Power. It was no great wonder if Hildebrand, in his persistent determination to secure the reformation and the liberty of the spiritual life, should have pressed the spiritual authority to a point where it came into conflict with the equally necessary freedom of the Temporal Power. Men are but mortal, and they are not to be over severely blamed if, in the ardent pursuit of some great end, they sometimes forget the infinite complexity of life.

It is possible to suggest that Hildebrand and Innocent III. may have sometimes dreamed of a theocracy, may have at least thought of a world directed and, if need be, ruled by the representative of the Spiritual Power. But, if they did so, it was but a dream, not necessarily an ignoble dream, but it had no relation to the actual character of mediæval society, or to its normal principles. The notion that mediæval society tended to something like a theocracy is, indeed, not now maintained by any serious student, but it is to be regretted that it still lingers in the popular mind. We have said enough, we hope, to make it clear that if at any time the Spiritual Power seemed to make the claim to a supreme Temporal authority, the claim was repudiated; and when, as in the thirteenth century, a theoretical principle was converted into something which at least resembled a practical policy, the Papacy, which seemed to be pursuing such a policy, was broken, as far as its political power was concerned.

The Middle Ages remained faithful to the Gelasian principle, that each Power, the Temporal and the Spiritual, derives its authority from God, and that neither Power has authority over the other in matters which belong to its own sphere.

PART III.

THE PRINCIPAL ELEMENTS IN THE POLITICAL THEORY OF THE MIDDLE AGES.

CHAPTER I.

THE INHERITANCE FROM THE ANCIENT WORLD.

FROM the first century of the Christian era until the later years of the eighteenth century, political theory presents itself to us as dominated in form by the conception that the great institutions of society, and especially the institution of government, were artificial or conventional, not "natural" or primitive. The writers of the seventeenth, and even most of the writers of the eighteenth, century continually contrast the original "state of nature" with the conditions of organised society, which they conceived of as being the result of some more or less deliberate creation of the human will. This conception, which was also the normal conception of the Middle Ages, can be traced back to the Christian Fathers and the Roman Jurists, and appears to have come to them from some at least of the post-Aristotelian philosophers. Seneca, in one well-known letter,[1] attributes it to Posidonius, and we may infer from the fact that it was common to the Fathers and to many, at least, of the Jurists, that it was a generally received opinion in the later centuries of the ancient world.

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[1] Seneca, 'Epistles,' xiv. 2.

It is true that in the middle of the thirteenth century St Thomas Aquinas rediscovered the Aristotelian politics, and as we have seen in this volume, recognised that the organised society of the State was a "natural" institution—"natural" in the sense that it had always formed an integral part of human life, and was the normal instrument of human progress. It is, however, also clear that the recovery of the Aristotelian conception was not permanent, that by the seventeenth century it had again given place to the post-Aristotelian, and it was not till Montesquieu and Rousseau's 'Contrat Social' [1] that the Aristotelian conception really came back to dominate political theory, as it has done ever since. It would appear that the post-Aristotelian conception was too firmly fixed in men's minds to be removed even by the great authority of St Thomas Aquinas.

The great institutions of human society were then conceived of as being artificial or conventional. It is important also to understand that this transition from a natural to a conventional condition of human life was conceived of as being the result of a great and primitive catastrophe, for it was the result of the appearance of evil in the world. It was not only the Christian Fathers, but also Stoics like Posidonius and Seneca who thought of man as having been originally good or at least innocent. The tradition of a Golden Age, a condition before men fell from their primæval innocence, was common to some philosophers as well as to the Christian writers. This is the origin of that curious ambiguity in mediæval writers regarding the nature of human institutions which has caused so much confusion to the unwary. For sometimes these writers speak of government as though it had a sinful origin, and modern historical critics have not infrequently misconstrued this, not observing that these mediæval writers at other times speak of it as a divine institution. We have endeavoured in the course of this work to clear up this ambiguity, and we hope that we have said enough to correct the mistaken interpretation which has been sometimes imposed upon the words of St Augustine and

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[1] Cf. especially Rousseau, 'Contrat Social,' i. 8.

Hildebrand. To the mediæval world, as well as to the Fathers and to Posidonius, the coercive authority of man over man was the result of sin; but it was also a remedy for sin—to the Christian theologians a divinely appointed remedy—an institution arising no doubt out of sinful conditions and desires, but also a means by which the sinful tendencies of human nature might be restrained and controlled, and by which the partially perverted nature of man might be directed to good ends.

This conception that political society and its institutions are conventional and not "natural" furnished the framework or formal system of political theory in the Middle Ages; but there was a much more important difference between the political theory of Aristotle and that of the Middle Ages. This is found in the highly developed doctrine of the equality and freedom of the individual man; indeed, we are still of the same mind as we were when, in the first volume, we ventured to say that it is here that we find the real dividing line between ancient and modern political theory.[1]

This is no doubt only one form of that great development of the conception of the individual personality which underlies the whole mediæval and modern conception of human life, and it is not our part here to attempt to deal with this, except so far as is necessary for the understanding of the changes in political theory; but for this purpose we must deal with the subject, however briefly.

The conception of individual personality and its relations to society is not indeed a simple thing. When we are modest and reasonable, we recognise that we can no more define this to-day in easy terms than men could have done formerly. We are, indeed, really more conscious of the extreme complexity of these relations than men were in the past. The freedom of the individual, and the authority of society, these are principles which we recognise as fundamental, but their relations to each other we are unable to define. The generous assertion of the necessary liberty of the individual man by

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[1] Cf. vol. i., pp. 6-13.

John Stuart Mill has a profound truth and value, but it does not carry us very far. The ideas of authority and of liberty baffle all attempts at definition, and the historian, at least, must content himself with tracing some of the stages through which these ideas have passed, and the successive apprehension of the significance of each.

It seems reasonable to say that we can recognise that at certain times one or other of these ideas seems to have developed more or less rapidly, and to have changed the conception of human society, and we can recognise such a period in the centuries between Aristotle and the Christian era. It may seem too much to say, and yet we do not wholly overstate the truth if we say, that during these centuries the primitive conception of the group as the fundamental unit of human life gave place to the modern conception of the individual as the unit. It would be unbecoming of the mediæval and modern historian to speak dogmatically in regard to that which lies in the province of the anthropologist, but it is, as we understand it, true to say that in the primitive and even the barbarian worlds, the individual was only very partially recognised. It is the solidarity of the group which is their characteristic.

We can see this under many forms, above all in the high degree in which moral responsibility and religion are conceived of as qualities of the group, of the family, the tribe or even the state, rather than of the individual. We can perhaps find the most obvious example of this in the development of the Hebrew religion. The contrast is familiar to us between the assumption of the moral and religious responsibility of the continuous family group, which is expressed in the words of the Second Commandment: "I, the Lord thy God, am a jealous God, visiting the iniquity of the fathers upon the children," and the indignant repudiation of this by Ezekiel (xviii. 20), when he says: "The soul that sinneth, it shall die: the son shall not bear the iniquity of the father, neither shall the father bear the iniquity of the son." It is not always, however, sufficiently observed that this is one expression of the transition from the group conception of life to the individual conception, but the fact is obvious. This is no doubt earlier than the period of which we are speaking, but it is an anticipation of what was fully developed in that period.

The development of the individualist idea of life was indeed not merely rapid, but was exaggerated. When Aristotle says that the isolated individual is not self-sufficing or that "he who is unable to live in society, or who has no need, because he is sufficient for himself, must be either a beast or a god," we feel the profound truth of his judgment. When Seneca ('Ad Serenum: Nec injuriam,' &c., viii.) says that no one can either injure or benefit the wise man, there is nothing which the wise man would care to receive; that, just as the divine order can neither be helped nor injured, so is it with the wise man; that the wise man is, except for his mortality, like to God Himself; we feel that he is immensely overstating the self-sufficiency of even the wisest man. Both Seneca and Ezekiel are immensely overstating their case; the wisest and best man is not self-sufficient, the children do still suffer for the evil of the fathers; and yet they are expressing a new sense of the meaning of personality.

It is, however, with some such considerations in our minds that we must approach the question of the significance of the dogmatic assertion of the "natural" equality and freedom of the individual man, which is asserted by Cicero and Seneca, by the Roman Jurists of the 'Digest' and by the Christian Fathers.[1] It may be doubted whether any change in political theory has ever been so remarkable as that which is represented by this dogmatic contradiction of the Aristotelian conception of the inequality of men. For these writers do not merely suggest a doubt, they dogmatically contradict. "Omnes namque natura æquales sumus," said Gregory the Great, and he was only repeating what he had learned from the Jurists, while they in their turn were no doubt only repeating the generally accepted doctrine of the post-Aristotelian philosophy. If, however, the contradiction of the Aristotelian conception was remarkable, the ground alleged for it is almost more so. Men are alike and equal, because they are alike possessed of reason and capable of virtue, says Cicero.[1] Where Aristotle had found the justification of slavery, Seneca found the place of unconquerable freedom; the body may belong to a master, the mind cannot be given into slavery.[2] It is only the same principle which Lactantius expressed when he said that God, who brings forth men, wished them all to be equal. He made them all for virtue, and promised them all immortality; in God's sight no one is a slave or a master.[3] The Christian writers did not create this philosophical principle; they were only transposing it into the terms which belong to the Christian theology. This new conception was not a discovery of Christianity, but it was taken up into it, and became the first and fundamental principle of its conception of human nature.

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[1] Cf. vol. i., chaps. 1, 2, 4, 10.

There are, it is true, some, not perhaps very intelligent historians, impatient of what they think the exaggerated importance attached to ideas, who may think that these conceptions were little more than rhetorical abstractions, which had little, if any, relation to actual life. In this case it happens that such an unintelligent scepticism is particularly unfortunate, for we can find in the Roman law not only the expression of these principles, but also the parallel changes in the legal position of the slave. In a well-known passage of the 'Institutes,' Gaius gives an account of the legal position of the slaves in the second century, and says that the slave had been in the absolute power of his master, but that this was no longer the case, for the law did not now permit the master to behave with arbitrary violence or cruelty to his slave,[4] and we can trace in the 'Digest' some of the stages through which the Roman law came to recognise what we may call the legal personality of the slave.

We have here the beginnings of that principle which has gradually become the foundation of the legal aspect of modern Western civilisation, the principle that all men are equal before the law, that all men are responsible for their own actions, because it is assumed that they are all possessed of reason. It would be difficult to find a more remarkable example of the influence of an idea or principle. For though the law may assume this equality and responsibility as a simple fact, we are also well aware that behind this apparent simplicity there lies an immense complexity of indeterminable elements.

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[1] Cicero, 'De Legibus,' i. 10, 12.

[2] Seneca, 'De Beneficiis,' iii. 20.

[3] Lactantius, 'Div. Inst.,' v. 15, 16.

[4] Gaius, 'Institutes,' i. 52, 53.

We have so far dealt with the significance of the conception of equality as related to the development of the idea of personality; we must consider a little further the conception of liberty, not now as personal liberty, but as related to politics.

It was not, we think, a mere accident that Cicero, who contradicted the Aristotelian conception of the inequality of human nature, also refused to recognise that an absolute monarchy or aristocracy, even of the most ideal kind—that is, the rule of men who far excel the rest of the community in wisdom and in virtue, and whose energies are directed wholly to setting forward justice and the good of the whole community—could be recognised as a good government. Good, he refuses to call such governments; at the best they are tolerable, and the reason he gives for this judgment is highly significant, for there is, he says, under such constitutions something of the nature of slavery. It could not be said that under such governments the multitude really possessed liberty.[1]

This identification of political liberty with a share in political power is another illustration of the essentially modern character of his political thought. We are not here discussing the final value of this conception in political thought; we shall have more to say about this matter when, in the next chapter, we discuss the later phases of the development of mediæval political theory. But it is fairly clear that behind these words of Cicero there lies the assumption that it is the equality of human nature which makes even the best absolute monarchies or aristocracies unacceptable. It is because all men have reason, and are capable of directing their lives to the end of virtue, that we cannot call a man free who is under the absolute control, however well meant, of another man. This judgment is, after all, the same as the judgment of all the more highly developed political societies of the present day. To an Englishman, or American, or Frenchman, the idea of aquiescing in a paternal despotism, even of the most well-intended or capable ruler or rulers, seems a merely laughable absurdity, the expression not of intelligence but of immaturity. We propose, we intend, to govern ourselves, and even the most seductive promises of efficiency—promises for which there has been little justification in history—will not induce us to submit to a master. There is, as Cicero says, something of the nature of slavery in all such governments; and it may, not unreasonably, be said that we are beginning to understand that it is just here that we find one most important cause of the industrial difficulties of the modern world.

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[1] Cicero, 'De Republica,' i. 26, 27.

It is, however, not only in the Ciceronian conception of government that we find an important expression of this idea of political freedom. His statement, paradoxically enough, coincided in time with the disappearance of constitutional government in the west, but it is only the more interesting to observe that, in spite of this, the one and only theory of the source of political authority, which the Roman Jurists handed on to the Middle Ages and the modern world, was the theory that all political authority is derived from the community itself, is founded upon the consent of the community. The Roman emperor was absolute, but this absolutism was a legal absolutism—that is, it was derived from law, for if he was absolute, it was because the Roman people had conferred upon him their own authority. This is the theory, and the only theory of the Roman Jurists, from Gaius in the second century to Justinian himself in the sixth century.[1]

Political authority rests not on the superiority of the ruler to the ruled, not on the principle of inequality, but solely upon the will of the community; it belongs to the community, it is delegated by the community. It rests not at all upon some supposed delegation of the divine authority to the ruler; that was nothing but an alien Orientalism, which some of the Christian Fathers, notably Gregory the Great, imported from a Semitic tradition of the Old Testament.

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[1] Cf. vol. i. chap. 6.

Aristotle might speak of the ideal monarchy or aristocracy as absolute, for to him the government of a civilised society was the expression of the superiority of some men over others; even his ideal commonwealth is the rule of a small body of equal citizens over a great mass of unenfranchised persons. To the Roman Jurists political authority resides in the community, and it is only from it that it can be received.

There is another aspect of the political theory of the ancient world, not only of the Christian writers, but just as much of Plato and Aristotle, which the mediæval and modern world inherited, and that is the principle of the moral purpose and function of the State.

The description of the nature of the State by Cicero in the 'De Republica' is well known. "Res publica, res populi, populus autem non omnis hominum coetus quoquo modo congregatus, sed coetus multitudinis iuris consensu et utilitatis communione sociatus."[1] St Augustine says that Cicero meant that the State cannot exist without justice; that where there is no justice there can be no "jus," and therefore no real "people"; that when the Government, whether a tyranny, oligarchy, or democracy, was unjust, there was no "respublica" at all. This conception of the State is continually referred to by the writers of the Middle Ages, and it is combined with the sharp distinction which St Isidore of Seville made between the king and the tyrant.[2]

In all this the post-Aristotelian political theory was carrying on the Aristotelian principle that it is the association of beings who have the sense of the just and unjust which makes both the family and the State,[3] and the related principle that the only true forms of government are those which aim at the common good of the whole community, while those which pursue the private interest of the ruler are perverted forms.[4]

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[1] Cicero, 'De Republica,' i. 25.

[2] St Augustine, 'De Civ. Dei,' xix. 21; St Isidore of Seville, 'Etym.,' ix. 3.

[3] Aristotle, 'Politics,' i. 2.

[4] Id. id., iii. 6.

The Christian writers express this principle when they say that government is a divine institution, as, for instance, St Paul, in the words, "Let every soul be subject to the higher powers, for there is no power but of God, and the powers that be are ordained of God." This is the accepted principle of the nature of the State and its authority in all mediæval writers. The notion that Hildebrand or any other intended to dispute it is merely a misconception, as we have shown in detail,[1] due to the failure to understand the significance of that contrast between the natural and the conventional with which we have dealt.

It is true that this principle was sometimes misunderstood, and that it was perverted into the absurd doctrine that the king was in such a sense the representative of God that he could not be resisted even if his rule were evil and unjust. This perversion, for which Gregory the Great was mainly responsible, was, however, little regarded in the Middle Ages. Its importance belongs to that period in the centuries from the sixteenth to the eighteenth when the constitutional principles of the Middle Ages were for the time neglected, and we do not therefore need to concern ourselves greatly with it. It was an idea derived from some Semitic traditions of the Old Testament.[2]

The real meaning of St Paul is clear to any one who will be at pains to look at the way in which he develops the principle which he has set out. For he not only says that the powers that be are ordained by God, but explains the meaning of this saying. "Rulers are not a terror to the good work, but to the evil," and "He is a minister of God to thee for good." St Paul is putting into the terms of religion the principle that the State with its authority is a divine institution, because its purpose or function is the maintenance of righteousness or justice. And this is the sense in which he was normally understood both by the Christian Fathers and by the political thinkers of the Middle Ages. St Irenæus, in a passage which has been too often overlooked, especially by those who overstate the influence of St Augustine, explains the origin and the purpose of government as being indeed a consequence of the sinful nature of man, but as, also, a remedy which God has established for man's sin. He has set men over each other that by this means they might be compelled to some measure of righteous and just dealing.[1] St Thomas Aquinas, in the middle of the thirteenth century, maintains that sedition is indeed a mortal sin, but the resistance to an unjust and tyrannical government is not sedition.[2]

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[1] Cf. vol. iii., part ii., chap. 2.

[2] Cf. vol. i., chap. 13.

The Christian doctrine of the divine origin and nature of government was therefore, properly speaking, a statement under the terms of religion that the end of government was a moral one—that is, the maintenance of justice.

So far, then, the political ideas which came down from the ancient world to the mediæval, while they were accepted by the Christian writers, and expressed by them in terms appropriate to Christian theology, were not specifically Christian or greatly modified by Christianity.

There is, however, one important principle of the nature of human society of which this cannot be said, one great principle and problem of the mediæval and modern world, which took its form from Christian principles. This is the principle which lies behind the great problem of the relations of Church and State, or as the mediæval people would have expressed it, the relation of the Temporal and Spiritual Powers. This great question, of which the modern world has no more found a final or complete solution than the mediæval, was the source of that great conflict of the Middle Ages in which both the political papacy and the empire were destroyed. We have explained several times that in our very clear judgment this great question, although it is inextricably bound up with the political events of the Middle Ages, did not, in itself and directly, contribute anything to the development of the other political ideas or institutions of the Middle Ages, and we think this will presently again become clear. But in a more general sense, in its relation to the general principles of human life and its organisation, no development in history is more significant than this of the independence of the spiritual life and its organisation.

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[1] Irenæus, 'Adv. Haer.,' v. 24.

[2] St Thomas Aquinas, 'Summa Theologica,' 2, 2, 42, 2.

When we consider the question carefully, it is evident that what we are dealing with is intrinsically the result of that developed sense of the individual human personality, of which we have spoken before. There was no question of Church and State in the earlier times of the ancient world, because religion was not something which belonged primarily to the individual, but to the group, the family, or tribe, or nation. Even among the Hebrews it was not, as most modern scholars seem to agree, until after the exile that it is possible to speak of an individual or personal religion. It is only in the later prophets, like Jeremiah and Ezekiel, and in the later Psalms, that we can find the expression of a personal or individual relation to God. And among the Western peoples this is even more obvious. We have learned not to undervalue the religion of the Greeks, and even of the Romans, but this religion was not normally a personal thing; the God was the God of the family or tribe rather than of the individual man. All this was greatly changed with the new conception of personality, not that the conception of the social aspect of religion was lost, but that the individual conception became immensely important.

The new conception cannot be better expressed than in the words of Ezekiel, to which we have already referred. "The soul that sinneth, it shall die: the son shall not bear the iniquity of the father, neither shall the father bear the iniquity of the son; the righteousness of the righteous shall be upon him, and the wickedness of the wicked shall be upon him." The individual man is responsible to God, and will be judged, not by the character of the group to which he belongs, but by his own.

With this great change, it became impossible for the moral and religious life to accept the authority of the political society in the matter of religion. We are not here discussing the question of the possible meaning of national religion, though it is obvious enough that the conception has become difficult; what we are concerned with is the sense of the independence of the spiritual and moral life from the control of the political authority. The new attitude is admirably represented in the words which the writer of the Acts of the Apostles attributes to Peter and John when they were brought before the Jewish authorities, and were forbidden to teach in the name of Jesus, "Whether it be right in the sight of God to hearken unto you rather than unto God, judge ye" (Acts iv. 19).

The relation of the Christians to the Roman Empire during the first three centuries was a practical exemplification of the significance of the new principle. They recognised, indeed, with St Clement of Rome, that it was from God that the rulers of the world had received their authority, and that it was in the name of God that they should submit to them,[1] but they could not, and would not, obey them in matters of religion and conscience. It was this claim which Constantine recognised in the Edict of Milan, when he proclaimed that not only the Christians but all other men should have the right to follow whatever religion they preferred.[2] It is no doubt true that this recognition did not last, the Theodosian Code shows that in less than a hundred years the Christian religion had not only become the official religion of the empire, but that, with the exception of Judaism, it was the only religion that was tolerated. We cannot, however, discuss the reasons for this failure. From the point of view of the practical politicians it may have appeared that the divergences of religion menaced the unity of the empire; from the point of view of the historian of civilisation it may seem that the group system was still too strong, and that the world had to wait many hundred years before the sense of the individual and personal responsibility was sufficiently developed to compel its recognition.

Whatever the reason may have been, and however great was the spiritual and moral failure of the representatives of the Christian Church, who if they did not directly cause, at least acquiesced in and justified, the action of the Roman Empire, it must not be supposed that the assertion of the independence of the spiritual life had entirely disappeared. It had assumed a new form, for the spiritual life was embodied in the Christian Church, and the Church recognised no spiritual authority in the State.

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[1] St Clement, Epistle to the Corinthians, 61.

[2] Cf. Edict of Milan in Lactantius, 'De Mortibus Persecutorum,' 48, and Eusebius, 'Historia Ecclesiastica,' x. 5.

It is possible to find some traces of uncertainty, some examples of a wavering and undecided attitude in the writings of the Western Fathers,[1] but in the main their attitude was clear and uncompromising, and is best represented by St Ambrose. He was clear that there were rights of the Church which were sacred and inviolable, that the Church had its own jurisdiction, to which all Christian men, whatever their rank, were subject, and that the jurisdiction of the State did not extend over any strictly ecclesiastical matters.[2] To the Western Church it was in the main clear that there were two great authorities in the world, not one, that the Spiritual Power was in its own sphere independent of the Temporal, while it did not doubt that the Temporal Power was also independent and supreme in its sphere.

This is the principle which is formally stated in the letters and treatises of Pope Gelasius I. in the latter part of the fifth century. Before the coming of Christ he admits that there were some who were both kings and priests, and the true and perfect king and priest was Christ Himself; but Christ, seeing the weakness of human nature, separated the two offices, and gave to each its own peculiar function and duties. Thus the Christian emperor needs the priest for the attainment of eternal life, and the priest depends upon the government of the emperor in temporal matters. There are, then, two authorities by which chiefly the world is ruled, the sacred authority of the pontiffs and the royal power. The burden laid upon the priest is the heavier, for he will have to give account in the judgment even for kings, but the authority of the emperor is derived from the divine order, and the rulers of religion obey his laws, while he must obey the spiritual rulers.[1]

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[1] Cf. vol. i., p. 176.

[2] Cf. vol. i., pp. 180-184.

This conception of the two autonomous authorities existing in human society, each supreme, each obedient, is the principle of society which the Fathers handed down to the Middle Ages, not any conception of a unity founded upon the supremacy of one or other of the powers. And, as we have endeavoured to show, this conception was never really lost. For the mediæval system did actually always tend to this dualism, and not to the idea of unity as has been sometimes suggested. It is no doubt true that the working out of this dualist principle proved to be surrounded with difficulties, and raised problems which are probably still in theory insoluble; and in the conflicts of "Church and State," of papacy and empire, from the eleventh to the thirteenth centuries, some claimed that the Church was supreme. But the claim was not admitted or made good, and with the death of Boniface VIII. it fell to the ground.

In the modern world it may sometimes seem as though the Temporal Power had established its supremacy, but this is only an illusion; and, indeed, with the recovery of the sense of the rights of the individual personality during the last four hundred years, the claim to supremacy has become impossible, for the truth is that the principle of the independence of the Church is only one form of the demand for freedom of the individual personality. It may no doubt be said, and with much truth, that the Church became in the Middle Ages the most dangerous and resolute enemy of this freedom, that it often tended to limit and hinder the development especially of intellectual freedom, and yet it remains true that in its claim that the spiritual and moral life are and must be independent of the political organisation of society, it did in its own way preserve the very principle which it seemed to attack.

Such, then, are the most important political ideas which the Middle Ages inherited from the ancient world, but it will be observed that, with the exception of the principle that the end or purpose of the State is the moral end of the establishment of justice, these principles are derived, not from the great political theory of Plato and Aristotle, but from the post-Aristotelian philosophy and literature. The political theory of the Middle Ages is not Aristotelian. It was not till the middle of the thirteenth century that St Thomas Aquinas recovered the political theory of Aristotle, and it is probably true to say that even his great influence and authority was not powerful enough to produce any great and permanent change. It was not till the latter part of the eighteenth century that the Aristotelian mode of political theory was really recovered, and became, as it then did, the dominant influence in modern political thought.

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[1] Cf. vol. i., p. 190.

CHAPTER II.

THE CHIEF PRINCIPLES OF THE POLITICAL THEORY OF THE MIDDLE AGES.

THE principal foundation upon which mediæval political theory was built was the principle of the supremacy of law—law, which is the expression of that which the community acknowledges as just, law which is the expression of the life of the community. There is nothing more characteristic of the Middle Ages than the absence of any theory of sovereignty, as this conception has been sometimes current during the last three centuries. The king or ruler of the Middle Ages was conceived of, not as the master, but as the servant of law; the notion of an absolute king was not mediæval, but grew up during the period of the decline of the political civilisation of the Middle Ages. How it grew up in the Continental countries we hope to consider in another volume. As we have indicated in this volume, up to the end of the thirteenth century the conception of a king or ruler who is above the law was represented only by one or two insignificant or academic writers and jurists, and had no relation to the actual conditions of political society.

It must, however, also be observed that if there was no absolute king there was also no absolute community. For the law, which was the supreme authority in the mediæval State, was not conceived of primarily as expressing the deliberate or conscious will of the community. It was, properly speaking, nothing but the custom of the community, a habit of action which was the expression or form of the life of the community. And even when we can see in the ninth century, or in the course of the twelfth and thirteenth centuries, under the influence especially of the revived study of the Roman jurisprudence, the beginnings of the conception of law as expressing the will of the community, this will was still conceived of as strictly restrained and limited by a law which was greater than that of any community—that is, by the natural law, the law which was the expression or embodiment of the principle of reason and justice.

All this, we think, is clear from the ninth century, when we can see the beginnings of formal political theory, to the great legal and philosophical writers of the latter part of the thirteenth. The political writers of the ninth century like Hincmar of Rheims, Jonas of Orleans, and Sedulius Scotus are never weary of saying that the function of the king is to maintain justice, that a king who does not do that is no king but a tyrant, the unjust king is no better than a wild beast. The only true authority is a just authority, or, as we might say, justice is the end or purpose of the State. And again, the king is not above the law; rather it is the nature of his office to maintain it, and he is bound by it as are all the people, for laws, so far as they are made, are made not by the king alone, but, as Hincmar says, "Generali consensu fidelium suum." This is the real significance of the words of the 'Edictum Pistense' of 864, "Quoniam lex consensu populi et constitutione regis fit."[1]

We have here, then, a very important resemblance and difference between the principles of the Middle Ages and those of the Roman world. An important resemblance, for the purpose and end of political authority is a moral end, the maintenance of justice; but also an equally important difference, for the law, which is the form or method of justice, is conceived of not as something which is made by the ruler, but as resting upon the agreement of the whole community. The constitutional theory of the Roman Empire, no doubt, as we have seen, looked upon the authority of the emperor as given to him by the community, a delegation of the authority of the community; but, in fact, the Roman emperor became the legislator. Justinian, indeed, speaks of him as the sole legislator.[1] The historical importance of this difference can hardly be overstated. In a very real sense we might say that it was this, together with the principle of equality, which more than any other has really distinguished the political civilisation of the modern world from that of the ancient empire, and that all the other characteristic principles of modern civilisation are ultimately derived from it. The tendency of the Continental countries of Europe in the seventeenth and eighteenth centuries to conceive of the king as being over the law and the sole source of law, whatever may have been its historical origin and explanation, was nothing but a relapse into a less developed conception of the political order.

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[1] Cf. vol. i., chaps. 18 and 19.

We must consider the meaning and form of this resemblance and difference a little more closely. The conception that the end and purpose of the political order is the maintenance of a moral order is treated by mediæval jurists in the main under the terms of the relation of the State to the ultimate principle of justice, sometimes under the terms of its relation to natural law.

Of the first we find an excellent example in the works of the great jurists of Bologna. They are agreed that jus—that is, the whole system of law—is derived from justitia; it flows from it, as a stream from its source. Justitia is the constant will or habit of mind which desires to render to every man what is his due, or as that which gives expression to the principle of aequitas. Aequitas they describe in terms which come to then ultimately from Cicero as "rerum convenientia quæ in paribus casibus paria jura desiderat," and they conceive of the principle of aequitas as residing in God Himself, for "God is aequitas." Law to the Bologna Civilian is the expression of justice—that is, of something which belongs to the divine nature itself; it does not represent the mere convenience or will of any person or persons.[2]

The Bologna Jurists also deal with the relation of law to the moral order under the terms of its relation to the natural law,[1] but that is more strictly the characteristic of the Canonists. Natural law, says Gratian, is divine law, and all laws which are contrary to this are null and void,[2] and this is the judgment of all the Jurists, both Civilian and Canonist. We have seen in an earlier chapter of this volume that St Thomas Aquinas, in his careful analysis of the nature of law, defines natural law as that part of the eternal law of God which is apprehended by man's reason, and he affirms that human law must be conformed to this.[3]

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[1] Cod. i. 14, 12.

[2] Cf. vol. ii., part i., chaps. 1 and 2.

We have distinguished the terms of justice and natural law under which the mediæval writers conceive of the limitation of the authority of the law of the State, but for our present purpose their significance is the same. Political authority in their judgment was not, never could be, absolute, because it is always limited by principles which are even more sacred than itself, the principles of the divine reason and moral order. Human law is the expression of these, or deals with matters which are indifferent.

This may seem to some a matter of little practical importance, but we venture to think that this would be a very hasty and unconsidered opinion. To mediæval political writers certainly it did not seem to be so, for to them it was the first test of a legitimate or illegitimate government; and it was the foundation of their principle of the supremacy of law. The law is supreme because it is just and so far as it is just, and all other authority is subject to the law. This is the foundation of the principle which we may here call the "Rule of Law." We have dealt with the matter very fully,[4] and cannot here repeat what we have said in detail, but we may recall to ourselves some of the most noteworthy sayings of John of Salisbury and of Bracton, as representing in the most significant terms the common judgment of mediæval thinkers and jurists.

The difference, says John of Salisbury, between the prince and the tyrant, lies above all in this, that the prince obeys the law, and governs his people according to the law, while the tyrant rules by violence and destroys the law; and the law which the prince obeys does not represent the arbitrary will either of himself or of the community, for it is subordinate to the law of God, whose justice is eternal, and whose law is "aequitas."[1] The authority of the king, says Bracton, is the authority of law (or right) not of wrong; the king is the vicar of God the eternal king when he does justice, but he is the servant of the devil when he does wrong, and, therefore, the king is under the law as well as under God; there is no king where there is no law.[2]

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[1] Cf. vol. ii., part i., chap. 3.

[2] Gratian, 'Decretum,' D. 1 and 9. Cf. vol. ii., part ii., chaps. 2 and 3.

[3] St Thomas Aquinas, 'Summa Theol.,' 1, 2, 91, 2; 2, 2, 57, 2. Cf. this vol., part i., chap. 4.

[4] Cf. especially vol. ii., part i., chaps. 3 and 4; part ii., chap. 5; vol. iii., part i., chap. 2; part ii., chap. 5.

It will be observed that the principle of the practical jurist coincides exactly with the principle of the philosopher, for it was not merely an abstract principle; it was the foundation of that legal and constitutional system of the Middle Ages which provided that for every violation of the law, even by the overlord or king, there was a legal remedy. The whole system of feudalism as a form of political authority was based upon the principle that the lord, even if he were king, was subject to the legal authority of the feudal court, whose function it was to declare and enforce the laws which regulated the mutual obligations of lord and vassal. This is the doctrine which is expressed in almost all the feudal law books.[3] It is no doubt true that in the later thirteenth century it began to be felt that the question of the procedure against the king involved difficulties which had not been fully recognised; but even then Bracton, while he is clear that the ordinary process of law cannot be used against the king or other person who has no superior except God, admits that some at least would say that the case would be dealt with by the "Universitas Regni" and the baronage in the Court.[4]

The principle that the end or purpose of the State is justice, and that law is the embodiment of justice, is carried on in the Middle Ages from the ancient world, but the development of this into the mediæval principle that the king himself was subject to law and to the court which administered the law goes beyond at least the explicit forms of Roman law. When we turn to the question of the origin or source of law, we certainly find a great and significant difference.

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[1] John of Salisbury, iv. 1 and 9; viii. 17; iv. 2.

[2] Bracton, 'De Legibus,' iii. 90-2; i. 8, 5.

[3] Cf. especially vol. iii., part i., chap. 4.

[4] Cf. vol. iii., part i., chap. 4.

It is no doubt true that the ultimate source of law was even under the empire held to be the custom or will of the Roman people, but its immediate source was normally the will and command of the emperor. This was, as we have said, entirely foreign to the normal conception of the Middle Ages. It is really time that historical scholars should recognise that to think of the mediæval king as in his own individual person a legislator is really to misunderstand the whole structure of mediæval life and society, and to read back into it conceptions which belong to a later world.

For the whole structure of the mediæval world was founded upon custom, and it was only very slowly and imperfectly that the conception that law represents the deliberate will and purpose even of the whole community developed. It may no doubt be thought that this was, in a measure at least, due to the fact that the mediæval world was only slowly emerging from barbarism, and that the Roman and the modern conception of law represents a higher stage of civilisation; and this is true, though it must also be remembered that there is a considerable measure of illusion in the modern conception of law as a command of the deliberate will. But this is, after all, immaterial to our present subject, for the fact was that to the Middle Ages law was and remained to the end of the thirteenth century primarily custom; and, therefore, to think of the mediæval king as a legislator is to think of him in terms which have no proper relation to the actual circumstances of the times.

We have dealt with this matter in detail, and cannot here recapitulate what we have said, but we recall a few of the more important statements of the principle. Bracton claims it as a peculiar excellence of England that, while in other countries men used written laws, in England unwritten law and custom prevailed; it would seem probable that Bracton thought of other countries as being governed by the Roman law. Certainly Bracton's suggestion about other countries was curiously inaccurate, for Beaumanoir lays down the same principle of the authority of custom—all pleas, he says, are determined according to custom. It is plain also that Alfonso of Castile and Leon in the 'Siete Partidas' recognises that custom has "naturally" the force of law, and that it could still make the written law void.[1]

In this matter the general principle of mediæval society was reinforced by the Canonists; indeed, it was Gratian who stated the principle that all human law was, properly speaking, nothing but custom, in the broadest terms. The human race, he says, is ruled by two things—by natural law and by custom. And he also maintains that no written law had any authority unless it was confirmed by the custom of those who were concerned.[2]

The Roman Jurists also had held that the custom of the Roman people at least once had made and unmade law, and Gratian's statement is derived from that fifth book of St Isidore's 'Etymologies' which has been thought to represent some manual of Roman law, and we shall presently have occasion to deal with the conception of the authority of custom as treated by the Bologna Civilians. For the moment we are only concerned to make it clear that the foundation of the mediæval conception of authority, as embodied in law, was the custom of the people.

This, however, is only a part of what we have to observe. For it is true that we can also see the appearance, first, in the ninth century, and then again in the twelfth and thirteenth, of the conception of law as expressing some deliberate purpose or intention, and as taking the definite form of a command. It is here, as we have seen,[3] that we can trace the first beginnings, for the modern world, of the conception of "sovereignty"—that is, of an authority behind the law, an authority which can deliberately make and unmake law. But here again we must make no mistake; the authority is not the king, not, at least, the king alone, but the community. The Roman law, indeed, recognised frankly and explicitly that the ultimate source of the authority of law was the Roman people. "Lex est quod populus jubet atque constituit," but the Roman people had committed this legislative authority to the emperor, and Justinian could speak of himself as the sole legislator.[1]

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[1] Cf. especially vol. iii., part i., chap. 3, and this vol., part i., chap. 5.

[2] Cf. vol. ii., part ii., chaps 2 and 8.

[3] Cf. p. 50 seq.

There is really no ambiguity or uncertainty about the mediæval position; if, and so far as, the law is made, it is made by the authority of the whole community in all its parts—the king, the great or wise men, and the whole people. The famous phrase of the 'Edictum Pistense' in the ninth century, "Quoniam lex consensu populi et constitutione regis fit," or that of Edward I. in the thirteenth century, "Quod omnes tangit ob omnibus approbetur," were not merely rhetorical phrases, but did really represent the principles of the political society of the Middle Ages. Again we cannot recapitulate our detailed discussion of this question. We can only refer any one who is still in doubt to the earlier volumes.[2]

Whether we consider the actual methods of legislation or the principles laid down by the feudal jurists, our conclusion is the same. In the Empire, in England, in France, in Spain, law was made, so far as it was made at all, by the king, but with the advice and approval of the community. It is, of course, true that until the development of the representative system in the twelfth century in Spain, and in the thirteenth century in England, there was no normal and direct method of consulting the community; but it is exactly this which gives its importance to the principle to which we have already referred, that however laws were made, they required to be confirmed by the custom of those who were concerned. The custom of the community, which had once been the only source of law, continued to be necessary for its validity.

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[1] Cf. vol. i., chap. 6.

[2] Cf. especially vol. i., chap. 19; vol. iii., part i., chap. 3; part ii., chaps. 5 and 6. This vol., part i., chaps. 5 and 6.

If we turn from the constitutional forms and practice to the feudal jurists, we find the same principles. Bracton's words represent this in the clearest way; the law is that which is made with the counsel and consent of the "magnates," the common approval of the commonwealth, and the authority of the king,[1] and Alfonso of Castile and Leon lays down almost the same doctrine when he says that "Fuero" is made with the counsel of good and prudent men, with the will of the lord, and the approval of those who are subject to them."[2]

It is true that in the twelfth and thirteenth centuries we can trace the appearance of a new influence upon the conception of legislation—that is, the influence of the revived study of the Roman law in the great school of Bologna. Here the mediæval Civilians found a conception of legislation which was in some respects fundamentally different from that which was represented in the constitutional systems of the Middle Ages. The great jurists of the 'Digest' were indeed clear that the ultimate legislative authority was the Roman people, but the Roman people had transferred to the emperor their legislative authority and function. "Quod principi placuit legis habet vigorem," Ulpian said,[3] and his doctrine is that of all the Roman Jurists, and the mediæval Civilians recognised this. They did not, indeed, forget, as may sometimes have been done later, that Ulpian added, "Utpote cum lege regia quæ de imperio enim lata est, populus ei et in eum omne suum imperium et potestatem conferat." The mediæval Civilians understood as clearly as the Roman Jurists that the "people" was the only ultimate source of authority; but they were also in contact with a conception of the legislative process which was, as we have just said, greatly different from that of the mediæval constitutions. It is not very easy to determine what exactly they thought about the relation of these principles to the existing circumstances. The mediæval empire was to them continuous with the ancient empire, and in their theory should have possessed and exercised the same power, and yet obviously enough it did not do so. It was perhaps the divergence between the theory and the fact that led some of the Civilians to find in one of the sections of the fourteenth title of the Code of Justinian the normal form under which the emperor should exercise his authority. In the eighth section Theodosius and Valentinian had laid down the form under which new laws were to be issued, including the consultation and consent of the Senate. The author of the 'Summa Trecensis' (Irnerius himself, in the judgment of Fitting), Roger, and Azo agree in maintaining that this was the proper form of imperial legislation, and it is possible that they found in this an approximation to the actual practice of the Middle Ages.[1]

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[1] Bracton, 'De Legibus,' i. 1, 2.

[2] 'Siete Partidas,' i. 2, 9.

[3] 'Digest,' i. 4, 1.

It is also possible that it was this divergence between the principles of the ancient Roman law and the actual constitutional conditions of their own time which led some of the Bologna Civilians, and especially Azo, Hugolinus, and Odofridus to assert that, when it was said that the Roman people transferred their authority to the emperor, this did not mean that they had parted with it in such a sense that they could not resume it. Hugolinus was specially emphatic about this; the Roman people had given its power to the emperor, but it still retained it. It had created the emperor its "procurator ad hoc"—that is, for the purpose of legislation.[2]

Other Civilians like Bulgarus and John Bassian, while they do not seem to have spoken as explicitly as Azo or Hugolinus, at least maintained that the general custom of the people had still the power to abrogate law, and that even the custom of a particular city would do this, so far as that city was concerned. There was, indeed, obviously a sharp difference of opinion upon this question among the Bologna Civilians, for Irnerius, Roger, and Placentinus maintained that the Roman people having tranferred their authority to the emperor, their custom had ceased to have legislative power.[3]

The influence of this new conception of the delegation of legislative authority from the community to the ruler cannot indeed be traced in the constitutional forms and methods of the thirteenth century, but it had some influence upon certain of the writers on politics. In the twelfth century, the writer whom we know as "Glanvill" was aware of the words of Ulpian, but he defines law as that which is promulgated with the consent of the "Proceres," and the authority of the prince.[1]

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[1] Cf. vol. ii., pp. 67-70.

[2] Cf. vol. ii., pp. 63-67.

[3] Cf. vol. ii., pp. 61-63.

John of Salisbury was also aware of the saying that what the prince pleased had the power of law, but he is mainly concerned to guard against a misapprehension of this. What is the use, he says, of talking about the will of the prince in public matters, when he can will nothing but what law and aequitas and the common good requires.[2]

In the thirteenth century St Thomas Aquinas was evidently familiar with the conception that the legislative function might be discharged either by the community as a whole or by one person, who in his own words, "curam populi habet et eius personam gerit." Curiously he does not anywhere, so far as we have seen, directly refer to the Roman law as the source of the conception of the one person who acts for the community, but it can hardly be doubted that it was from the Roman law that he derived it. He recognised two possible cases, the one where the people was free, and could make laws for itself, the other where the laws are made by a superior. He himself prefers the mixed constitution, in which laws were made by the "majores natu simul cum plebibus."[3]

At the end of the century, Ptolemy of Lucca and Egidius Colonna recognise two possible forms of government, the "regimen politicum" and the "dominium regale" (or "regimen regale"). The first is that when the country is governed by laws which it makes itself, the second when it is ruled by laws which are in the prince's own heart, and which he makes himself. Ptolemy enumerates the respective advantages of each, but gives no dogmatic preference of his own. Egidius recognises both as legitimate, but he definitely gives his preference to the latter—that is, to the form of government where the prince rules "secundum arbitrium et secundum leges quas ipse instituit."[1] It is again noticeable that neither Ptolemy nor Egidius relates his conception of the legislative authority of the prince to the Roman law, but again it can hardly be doubted that this was its source.

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[1] Glanvill, 'De Laudibus,' Prologue, vol. iii., p. 138.

[2] John of Salisbury, 'Policraticus,' iv. 2.

[3] Cf. p. 70.

We venture, therefore, to say that while the conception of a law-making power became important in the thirteenth century, and was, indeed, the first form in the modern world of the conception of the sovereign power behind the law, this sovereignty in the practice and in the normal constitutional theory of the thirteenth century belonged to the whole community. The first appearance of the conception that the prince was the legislator, was due to the revived study of the Roman law, but it remained till the end of the thirteenth century merely academic, and had no effect upon the constitutional practice of mediæval societies, and very little on political theory.

The true character of the mediæval conception of government only becomes clearer when we turn from the consideration of the supreme authority of the law, and inquire what then was the source and nature of the authority of the prince or ruler. It is the law, said Bracton, that makes the king,[2] and these words are very characteristic of the mode of thought of the Middle Ages. The doctrine of an indefeasible divine right of any individual person to the throne may have been alleged in the seventeenth century, but it was not accepted in the Middle Ages. The mediæval conception was much more complicated; the action of the divine Providence, the custom of hereditary succession, the election by the great men and the people, all these were elements in it. But the one element which is normally present was that of the election or recognition by the community. The distinction between the elective and the hereditary method of succession finds recognition in many writers, and sometimes at least it was suggested that those who held by hereditary succession might claim to possess a greater authority.[1] In the empire the elective principle finally triumphed, while in the other European societies the custom of hereditary succession within one family came to be recognised as normal; but this did not mean that a claimant would be recognised, even if he stood nearest in hereditary order, if he were not suitable in character and capacity.[2] It is significant in this connection to observe that Egidius Colonna, the only person who in the thirteenth century expressed a preference for the absolute monarchy, agreed with his contemporary John of Paris, who praised the constitutional and mixed government, in asserting that the authority of the ruler was derived from the consent of the people.[3]

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[1] Cf. pp. 72-76.

[2] Bracton, 'De Legibus,' i. 8, 5.

The mediæval principle with regard to the relation of the authority of the prince to that of the community is, however, more clearly indicated when we observe that there is little, if any, hesitation among the writers of the Middle Ages as to the power of the community to depose the ruler who misused his authority. Even Egidius Colonna, in his work on the resignation of the papal throne by Celestine, recognised that as the authority of the ruler was derived from the consent of the people, it might be taken from him by the same consent,[4] and St Thomas Aquinas is very clear and emphatic in his contention that the people are in no way bound to obey a ruler whose authority is usurped or abused.[5]

It may, however, be urged that after all this is only what in modern times we might call the right of revolution, and that it would be a somewhat barbarous and uncivilised constitutional system which could find no other remedy for misgovernment than the somewhat violent method of revolt and deposition, and that if that were all that mediæval political development attained to, it would not represent anything very valuable.

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[1] Cf. Alfonso, 'Siete Partidas,' ii. 1, 8.

[2] Cf. vol. i., chap. 20; vol. iii., p. 150.

[3] Egidius Colonna, 'De Renuntiatione Papæ,' xvi. 1. Cf. p. 77.

[4] Id. id.

[5] St Thomas Aquinas, 'Summa Theol.,' 2, 2, 104, 6.

This was not, however, the real character of the political order of the Middle Ages either in practice or in principle. As we have already said, the really fundamental principle of the Middle Ages was the supremacy of the law and the subordination of the ruler to the law. It is here perhaps that we shall find the most significant element of feudalism as a system of government, for there was nothing more important in the feudal system than the fact that the lord, even if he was the king, was answerable to the jurisdiction of the feudal court. For the feudal court was the guardian and administrator of the law. It seems to be true that the well-known words which say that the King of England was subject not only to God and the law, but also to the court, were not written by Bracton,[1] but this is really immaterial. For, even though Bracton did not use the words, he admits that it may be maintained that if the king will not do justice he might in the end be constrained to do so by the "Universitas Regni" in the court.[2]

What is more important is that the principle that in cases of dispute between a vassal and his lord the judgment belongs not to the lord but to the court is the principle of all the feudal law-books from the 'Consuetudines Feudorum' and the Assizes of Jerusalem to Beaumanoir; and except for Bracton's assertion that the ordinary process of law could not be used against the king, there is no suggestion that the king was not bound to accept the judgment of the court.[3] This is the real significance of the famous clause of Magna Carta which provided that no man could be imprisoned or outlawed or attacked even by the king except by the judgment of his peers or the law of the land.[4] To read this clause, or, indeed, any part of Magna Carta by itself, and without relation to the whole system of feudal law, only leads to a complete misunderstanding of its real significance.

It is the same principle, only under another form, which is represented by the statement of the 'Sachsenspiegel' that even the emperor has a judge[1] to whom the decision of questions between himself and his vassals must be referred; and this statement of the 'Sachsenspiegel' is illustrated for us in the reports of the proceedings between Rudolf of Hapsburg and the King of Bohemia.[2] It would seem probable that the same principle and form was represented by the great official whom we know as the "Justitia" in Aragon; and we have seen that under less determined forms the same principles appear in the record of the mode of settlement of questions between the king and his vassals in various parts of Spain.[3]

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[1] Bracton, 'De Legibus,' ii. 16, 3. Cf. vol. iii., p. 71.

[2] Cf. id. id., iv. 10; vol. iii., p. 71.

[3] Cf. vol. iii., part i., chap. 11.

[4] Magna Carta, 39.

The political order of the Middle Ages, therefore, was not only built upon the principle of the supremacy of the law, but had developed a method by which this supremacy could be enforced even upon the prince. This is the real political meaning of the struggle over the question of taxation. The feudal prince was legally entitled not only to the various services of his vassals, but for certain purposes had the right to demand financial contributions. But his right was in this matter determined by custom and law; he had no arbitrary or unlimited rights over his vassals' property, any more than over their persons. Many even of the Bologna Civilians repudiated the opinion which was attributed to one of their number, Martinus, that the emperor had an absolute right over the property of his subjects, and as far as we have seen no other writer or jurist even suggests such a theory.[4]

The authority of the prince was then, in the political system, as well as in the theory of the Middle Ages, founded upon law and limited by law. It is here that we find the foundation of that contractual principle which was sometimes expressed and always implied in mediæval political theory. The obligations of the prince and the people were mutual obligations, and these obligations were expressed in the law.

The mediæval thinkers were little, if at all, affected by the unhistorical and artificial theory of the seventeenth century, of an original contract by which the commonwealth was formed, we are not here concerned with the question what significance, not of an historical kind, that theory may possess, but the conception of a mutual agreement between the ruler and the subjects was familiar to them. As we have pointed out, it was the foundation of all feudal relations, and was emphatically stated by the feudal jurists.[1]

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[1] 'Sachsenspiegel,' iii. 52, 3. Cf. vol. iii., p. 61.

[2] Cf. p. 106.

[3] Cf. pp. 108-110.

[4] Cf. vol. ii., pp. 72-74; this vol., p. 101.

The conception was, however, as it seems to us, older and more deeply rooted than the developed feudalism. It appears to us that it can be traced to the forms of the coronation order as far back as the ninth century, and it survives in the English coronation order of to-day. For while the subjects swear to obey the prince, the prince swears to administer the law.[2] The sharp and drastic terms in which this principle was stated by Manegold of Lautenbach [3] may be abnormal, but the principle was normal; the prince held his authority on the understanding that he fulfilled his obligations. The prince who persistently violated them forfeited all claim to his position, and might properly be deposed. This is the constitutional principle not only of Manegold, but of St Thomas Aquinas,[4] and the history of the Middle Ages illustrates sufficiently clearly that it was not a merely abstract principle.

It may, however, be said again that these principles and practices represent a somewhat undeveloped and even barbarous condition of society, and that would no doubt be true if they stood alone, if the Middle Ages had not advanced any further. This was, however, not the case; on the contrary, it is clear that we can see both in fact and in theory the development of a system of a limited and constitutional method of government. St Thomas Aquinas will furnish us with the best example of this theory. In the same passage which we have just cited, he sets out the general principle that it would be well that the authority of the king should be so tempered that he could not easily abuse it, and in the 'Summa Theologica' he expresses his own preference for a form of government in which authority should be shared by the king with others, who should represent the community.[1] His opinion is restated by John of Paris.[2] How far either St Thomas or John of Paris were aware of the actual tendencies of the constitutional development of the twelfth and thirteenth centuries does not appear; but their theories correspond with the actual facts.

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[1] Cf. vol. iii., part i., chap. 4.

[2] Cf. vol. i., p. 214, and chap. 20.

[3] Cf. vol. iii:, part ii., chap. 6.

[4] St Thomas Aquinas, 'De Reg. Prin.,' i. 6. Cf. p. 96.

We have in this volume endeavoured to give a summary account of some of the experiments by which in the course specially of the thirteenth century it was attempted to provide for some constant and effective control upon what we should call the administrative action of the Crown,[3] but these, except in so far as they anticipated the later development of the principle of the responsibility of ministers, were in themselves abnormal and of comparatively little importance. It was not until the development of some method by which the community as a whole should be more or less effectively represented that this continuous control over the action of the crown could be properly created.

It was, therefore, in the creation of a system which could be conceived of as representing the whole community that the political development of the Middle Ages culminated, and that its political principles found their most complete expression. It is no doubt true that it was under the pressure of particular conditions and movements in various countries that the elective and representative bodies were created, but the principle which they embodied was the principle which lay behind the character of the whole political civilisation of the Middle Ages, and it is only a grave misunderstanding which would separate between the development of the representative system and the general political principles of mediæval society.

We venture therefore to say, and we do it without hesitation, that the proper character of the political civilisation of the Middle Ages is to be found in the principle that all political authority, whether that of the law or of the ruler, is derived from the whole community, that there is no other source of political authority, and that the ruler, whether emperor or king, not only held an authority which was derived from the community, but held this subject to his obedience to that law which was the embodiment of the life and will of the community, and that the development of the representation of the community in Cortes or Parliaments or States-General was the natural and intelligible form which that principle assumed. How it came about that in the course of the succeeding centuries these rational and intelligible principles of political society should have in some measure given place to the somewhat barbarous conception of the absolute monarchy, we hope to consider in the next volume; but we trust that we have succeeded in making it clear that, whatever may have been the circumstances which explain this, to the Middle Ages the conception of an absolute or arbitrary monarchy was practically unknown.

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[1] St Thomas Aquinas, 'Summa Theol.,' i. 2, 105, 1.

[2] John of Paris, 'Tract. De Potestate Regia et Papali,' 11.

[3] Cf. pp. 120-127.

The life of the Middle Ages was turbulent, disorderly, often almost anarchical, but they found the remedy for this not in submission to an irrational despotism, but in the recognition of the supreme authority of law, a law not external or mechanical, but the expression and embodiment of the life of the community.

APPENDIX I.

Note to p. 97.

In one place, indeed, St Thomas speaks as though the prince were not subject to the law; he cites the words of St Paul, "Law is not made for a righteous man," and those of Ulpian, "Princeps legibus solutus est." He explains the first by saying that the righteous are not coerced by the law, for they obey it willingly, and the second by a distinction between the "vis coactiva" and the "vis directiva" of the law. The prince is not under the law as "coactiva," for the law receives its coercive power from the authority of the prince, and he quotes the Gloss on Psalm 50 (51), "rex non habet hominem qui sua facta diiudicat"; but the prince is under the "vis directiva" of the law, and this is what is meant by the words of Theodosius and Valentinian, "Digna vox est," &c. In the judgment of God the prince is not "solutus a lege" as far as its "vis directiva" is concerned, but he must obey it voluntarily, not under coercion. The prince is also above the law, inasmuch as he can change it if it is expedient to do so, and can dispense from it.[1]

If we are to understand this passage, we shall do well to observe that when St Thomas quotes Ulpian's words he is only doing the same as John of Salisbury, who certainly did not mean that the prince was not bound to obey the law, for, as he maintains, the prince who does not conform to the law is merely a tyrant who should be removed.[1] The meaning of St Thomas is to be found rather in his quotation of the Gloss, that there is no one who can act as judge over the king. To understand this it is well to observe that Bracton is aware of the same dilemma as St Thomas, and even in a more acute degree, for Bracton, while he maintains that the king is under the law,[2] at the same time asserts that he is not under any man, he has no equal, much less a superior, and the ordinary process of law does not run against him. He can only suggest that it may be said that the remedy lies in the intervention of the "universitas regni."[3] St Thomas, as we have seen from his treatment of the subject in the 'De Regimine Principum,' seems to mean that while there is no ordinary process of law against the king, the community has power to restrain him, or if need be to depose him.[4]

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[1] St Thomas Aquinas, 'Summa Theologica,' 1, 2, 96, 5. 'Apostolus dicit I. ad Timoth i. quod iusto non est lex posita'; ergo iusti non subjiciuntur legi humanæ. . . . Practerea Jurisperitus dicit quod "princeps legibus solutus est" (Digest, i. 3, 31). . . . Respondeo dicendum, quod, sicut ex supra dictis patet, lex de sui ratione duo habet: primo quidem, quod est regula humanarum actuum: secundo, quod habet vim coactivam: dupliciter ergo aliquis homo potest esse legi subiectus. Uno modo, sicut regulatum regulæ . . . Alio vero modo dicitur aliquis subiectus legi, sicut coactum cogenti: et hoc modo homines virtuosi, et iusti non subduntur legi, sed soli mali, quod enim est coactum, et violentum, est contrarium voluntati: voluntas autem bonorum consonat legi, a qua malorum voluntas discordat: et ideo secundum hoc boni non sunt sub lege, sed solum mali . . . At Tertium dicendum, quod princeps dicitur esse solutus a lege quantum ad vim coactivam legis: nullus enim proprie cogitur a seipso: lex autem non habet vim coactivam, nisi ex principis potestate; sic igitur princeps dicitur esse solutus a lege, quia nullus in ipsum potest iudicium condemnationis ferre, si contra legem agat; unde super illud Psalm 50: 'Tibi soli

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peccavi, etc.' dicit Gloss, quod rex non habet hominem qui sua facta diiudicet: sed quantum ad vim directivam legis princeps subditur legi propria voluntate: secundum quod dicitur extra de constitutionibus, cap. 'Cum omnes' . . . et in Codice Theodosius et Valentinianus Impp. . . . scribunt (Cod. i. 121, 4): 'Digna vex est maiestate regnantis, legibus alligatum se principem profitere, adeo de auctoritate iuris nostra pendet auctoritas: et revera maius imperio est subicere legibus principatum.' Improperatur etiam his a Domino, 'qui dicunt et non faciunt'; et 'qui aliis onera gravia imponunt, et ipsi nec digito volunt ea movere,' ut dicitur Matth. 23, unde quantum ad Dei iudicium princeps non est solutus a lege quantum ad vim directivam eius; sed debet voluntarius, non coactus, legem implere. Est etiam princeps supra legem, inquantum, si expediens fuerit, potest legem mutare, et in ea dispensare pro loco et tempore."

[1] Cf. vol. iii., pp. 136-139.

[2] Cf. vol. iii., p. 67.

[3] Cf. vol. iii., pp. 70-73.

[4] St Thomas Aquinas, 'De Regimine Principum,' i. 6. Cf. p. 96.

(APPENDIX II. has been withdrawn.)

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